

# Exhibit V – Chief John McGrath's Deposition

Deputy Chief John McGrath ~ July 31, 2019  
\* \* \* Videotaped Deposition \* \* \*

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1 CERTIFICATE OF REPORTER

2 I, the undersigned, a Certified Shorthand  
3 Reporter of the State of Nevada, do hereby certify:

4 That the foregoing proceedings were taken  
5 before me at the time and place herein set forth;  
6 that any witnesses in the foregoing proceedings,  
7 prior to testifying, were duly sworn; that a record  
8 of the proceedings was made by me using machine  
9 shorthand which was thereafter transcribed under my  
10 direction; that the foregoing transcript is a true  
11 record of the testimony given to the best of my  
12 ability.

13 Further, that before completion of the  
14 proceedings, review of the transcript [X] was  
15 [ ] was not requested pursuant to NRCP 30(e).

16 I further certify I am neither financially  
17 interested in the action, nor a relative or employee  
18 of any attorney or party to this action.

19 IN WITNESS WHEREOF, I have this date  
20 subscribed my name.

21

22 Dated: August 13, 2019

23

24

25

  
GALE SALERNO, RMR, CCR #542

Deputy Chief John McGrath ~ July 31, 2019  
\* \* \* Videotaped Deposition \* \* \*

Page 1

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

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5

6 TRINITA FARMER, individually, )

7 Plaintiff, )

8 vs. )

9 LAS VEGAS METROPOLITAN POLICE )

10 DEPARTMENT, a political )

11 Subdivision of the State of )

12 Nevada; KENNETH LOPERA, )

13 individually; TRAVIS CRUMRINE, )

14 individually; MICHAEL TRAN, )

15 individually; MICHAEL FLORES, )

16 individually, )

17 Defendants. )

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VIDEOTAPED DEPOSITION OF

DEPUTY CHIEF JOHN MCGRATH

Taken on Wednesday, July 31, 2019

At 9:38 a.m.

Held at Lagomarsino Law

3005 West Horizon Ridge Parkway, Suite 241

Henderson, Nevada 89052

Reported By: Gale Salerno, RMR, CCR No. 542

**CONDENSED  
TRANSCRIPT**

All-American Court Reporters (702) 240-4393  
www.aacrly.com

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\* \* \* Videotaped Deposition \* \* \*

3 (Pages 6 to 9)

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<p>1 MR. ANDERSON: Craig Anderson on behalf of 2 Las Vegas Metropolitan Police Department, Officers 3 Crumrine, Tran and Flores. 4 THE VIDEOGRAPHER: Thank you. 5 And the witness may now be sworn in by 6 Gale Salerno for All-American Court Reporters. 7 - - - 8 DEPUTY CHIEF JOHN MCGRATH, 9 having been first duly sworn, was 10 examined and testified as follows: 11 - - - 12 13 EXAMINATION 14 BY MR. LAGOMARSINO: 15 Q. Good morning. Could you please state your 16 name for the record. 17 A. John McGrath, M-c-G-r-a-t-h. 18 Q. Have you ever had your deposition taken 19 before? 20 A. Yes. 21 Q. On how many occasions? 22 A. I don't recall, but at least once for this 23 case. 24 Q. Are you familiar with the instructions and 25 admonitions that go along with depositions?</p>	<p>1 A. Approximately five years. 2 Q. What were your specific job 3 responsibilities with respect to constitutional 4 policing? 5 A. Yeah, I was only there for three months, 6 but in constitutional policing, that captain is part 7 of executive staff. So you're the only person that's 8 not appointed by the sheriff to be part of executive 9 staff and the only captain that's on executive staff. 10 Secondly, there's three parts of 11 constitutional policing: FIT, which is the Force 12 Investigation Team, which investigates use of force 13 and criminal allegations, and makes a report to the 14 district attorney's office, and submits that to them 15 and they decide whether there's any criminal charges. 16 The Critical Incident Review Team, which 17 looks at the tactics the officers employed or the 18 supervisors, to see if there's anything that they 19 could have done better or any policies that need to 20 be changed related to that incident. 21 And then OIO, which is a section that 22 basically is looking out for the officers involved in 23 critical incidents, their welfare. And also they're 24 responsible for putting out awareness reports, which 25 is something that immediately we want to let the</p>
Page 7	Page 9
<p>1 A. Yes. 2 Q. Basically you understand you're under oath? 3 A. Yes. 4 Q. So we'll skip those today. 5 Could you please tell me your current job 6 position? 7 A. I'm a Deputy Chief with Las Vegas 8 Metropolitan Police Department over the Professional 9 Standards Division, which includes Human Resources 10 and Organizational Development, which is all of 11 training. 12 Q. How long have you been in that position? 13 A. About two and a half years. 14 Q. Prior to that, what was your position with 15 Metro? 16 A. I was a captain. 17 Q. And what were your job duties and 18 responsibilities as a captain? 19 A. As a captain I had several different 20 assignments, including Northwest Area Command, 21 Internal Affairs, Criminal Intelligence, and Internal 22 Oversight in Constitutional Policing. Different 23 bureaus within the agency. 24 Q. And how long were you a captain with those 25 responsibilities?</p>	<p>1 department know that we have an issue or a problem 2 with this incident and we want to change their 3 behavior immediately. 4 Q. Is OIO Office of Internal Oversight? 5 A. Yes. 6 Q. When you stated that it's the only captain 7 not appointed by the sheriff, what does that mean? 8 A. So members of an executive staff, deputy 9 chiefs and above, are chosen by the sheriff. You 10 don't test for those positions. And so he appoints 11 you to that position, and then you become an 12 appointed person, a part of the department. 13 Q. What difference does it make if you're not 14 appointed? Is it a merit-based type of -- 15 A. It's merit-based, but you don't have to 16 test, so you're just chosen. So he gets to pick 17 who's on executive staff, but you can be also 18 unappointed and put back to your previous rank of 19 captain. 20 Q. And were you appointed? 21 A. Yes. 22 Q. Who appointed you? 23 A. The sheriff. 24 Q. Which sheriff? 25 A. Lombardo. Sorry.</p>

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\* \* \* Videotaped Deposition \* \* \*

4 (Pages 10 to 13)

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<p>1 Q. That's okay.</p> <p>2 So prior to being a captain, what position</p> <p>3 did you hold?</p> <p>4 A. Lieutenant.</p> <p>5 Q. And what were your job responsibilities as</p> <p>6 lieutenant?</p> <p>7 A. I was a patrol lieutenant at Enterprise</p> <p>8 Area Command, and then I was admin lieutenant on the</p> <p>9 Strip at Convention Center Area Command. And then I</p> <p>10 was in the gang unit for the majority of my time as a</p> <p>11 lieutenant.</p> <p>12 Q. And how long were you a lieutenant?</p> <p>13 A. I think about five years.</p> <p>14 Q. And how long did you work at the Convention</p> <p>15 Center Area Command?</p> <p>16 A. I think about a year.</p> <p>17 Q. This incident with Tashii Farmer occurred</p> <p>18 in the Convention Center Area Command; is that</p> <p>19 correct?</p> <p>20 A. That's correct.</p> <p>21 Q. Prior to being a lieutenant, what was your</p> <p>22 position?</p> <p>23 A. I was a sergeant. And I'll go through</p> <p>24 those assignments, because I guess that's what you're</p> <p>25 looking for.</p>	<p>1 A. I recovered a stolen vehicle my first shift</p> <p>2 of my first day, so I won't forget it.</p> <p>3 MR. MCNUTT: Is that like a Model T or</p> <p>4 what?</p> <p>5 THE WITNESS: No. It wasn't the first car</p> <p>6 made. It was the first car I saw when I started to</p> <p>7 go to work and two guys were pushing it down Fremont</p> <p>8 Street.</p> <p>9 BY MR. LAGOMARSINO:</p> <p>10 Q. That's the kind of stuff that happens</p> <p>11 downtown.</p> <p>12 A. It is the kind of stuff that happens</p> <p>13 downtown. And they don't teach you how to do a</p> <p>14 felony car stop of two guys pushing a car either.</p> <p>15 Q. So prior to the sergeant you were patrol?</p> <p>16 A. Yes.</p> <p>17 Q. And approximately how long were you in</p> <p>18 patrol before you became a sergeant?</p> <p>19 A. I think about seven years.</p> <p>20 Q. When you started working with Metro, had</p> <p>21 you just moved to Las Vegas?</p> <p>22 A. Yes.</p> <p>23 Q. What brought you to Las Vegas?</p> <p>24 A. The job. I was going to college and I</p> <p>25 tested to come out here, and then when I graduated I</p>
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<p>1 Q. Sure.</p> <p>2 A. I was a patrol sergeant, a field training</p> <p>3 sergeant. PSU sergeant, which is problem solving</p> <p>4 unit, which is a plainclothes unit assigned to</p> <p>5 patrol.</p> <p>6 And then I was in property crimes, which is</p> <p>7 a detective sergeant position.</p> <p>8 And then I was in auto theft, and also a</p> <p>9 viper, which is an auto theft task force, which is</p> <p>10 undercover.</p> <p>11 Q. How long as a sergeant?</p> <p>12 A. Seven or eight years. I hope this all adds</p> <p>13 up to 27.</p> <p>14 Q. Maybe it will be more and you can retire</p> <p>15 early.</p> <p>16 A. The longer you're on, you start to forget</p> <p>17 some of the numbers of years you're in certain</p> <p>18 assignments.</p> <p>19 Q. I bet you remember what your first day was</p> <p>20 though, right?</p> <p>21 A. Yeah.</p> <p>22 Q. What was that?</p> <p>23 A. That was at Downtown Area Command in field</p> <p>24 training. I got a stolen car my first shift.</p> <p>25 Q. Say that again.</p>	<p>1 just started the Academy a couple of months later.</p> <p>2 Q. You went to the University of Massachusetts</p> <p>3 Lowell?</p> <p>4 A. Yeah.</p> <p>5 Q. Graduated in '92 with a degree in criminal</p> <p>6 justice?</p> <p>7 A. Right.</p> <p>8 Q. Graduated high school in '78?</p> <p>9 A. Yep.</p> <p>10 Q. Had you ever been in the military?</p> <p>11 A. Yes. I was in the Army.</p> <p>12 Q. How long were you in the Army?</p> <p>13 A. Four years, '85 to '89.</p> <p>14 Q. I'm assuming you were honorably discharged?</p> <p>15 A. Yes.</p> <p>16 Q. When you referenced your responsibilities</p> <p>17 over professional standards, what does that entail?</p> <p>18 A. So there's two different bureaus. And just</p> <p>19 to note that that's different from my last deposition</p> <p>20 because I had project management and video bureau at</p> <p>21 that time. And since then we've hired a chief</p> <p>22 technology officer, and they restructured some</p> <p>23 bureaus and moved that away from me so I don't have</p> <p>24 that anymore.</p> <p>25 But at the time that was why I was more</p>

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5 (Pages 14 to 17)

<p style="text-align: right;">Page 14</p> <p>1 involved in policymaking and the issues we had with          2 different department policies. And so I don't have          3 that anymore.          4 So currently, I have Organizational          5 Development Bureau, which is -- includes the police          6 academy, field training, critical incident -- the          7 crisis intervention team, sorry, CIT. And then all          8 of training which is range, driver's training, which          9 we call EVOC, reality-based training, advanced          10 officer skill training, and MACTEC.          11 And then on the human resources side,          12 there's a selection and classification, which is          13 basically the hiring of officers, background          14 investigations on new employees and recruiting.          15 Q. Do you have direct reports?          16 A. Yes.          17 Q. Who are your direct reports?          18 A. Dennis O'Brien is the captain over          19 organizational development. And Joe Sobrio is a          20 director who is over human resources currently.          21 Q. And who are their direct reports, to your          22 knowledge?          23 A. Director Sobrio has Lieutenant Terry          24 Bernard and two managers on the selection and          25 classification side, Teresa Turteltaub,</p>	<p style="text-align: right;">Page 16</p> <p>1 I'm the head of the commendations board,          2 which hears all the commendations on the department.          3 I am the uniform committee. There's no one          4 else on it but me, because the sheriff doesn't want a          5 lot of changes to the uniforms. So if there's a          6 change, I just meet with him and he says whether or          7 not he approves it.          8 Q. Okay.          9 A. I'm on the employee health and welfare          10 trust as a management representative.          11 I sit on the use of force board, which a          12 few -- two or three or four a month of those boards.          13 Q. Do you sit on any budgeting boards?          14 A. No. Thank God.          15 Q. In terms of the uniform committee, there's          16 been some discussion in this case about BDUs.          17 A. Yes.          18 Q. Are you familiar with what a BDU is?          19 A. Yes.          20 Q. What does that stand for?          21 A. Well, it's a military term for battle dress          22 uniform, but for us it means greens, which is a green          23 uniform that basically I think they're just 511s, if          24 you know what those are. They're a plain uniform          25 with square pockets that the buttons are covered.</p>
<p style="text-align: right;">Page 15</p> <p>1 T-u-r-t-l-e-t-a-u-b, and Adam Markwell, common          2 spelling.          3 And then on the organizational development          4 side, their direct reports, Captain O'Brien's reports          5 are Misty Pence is the lieutenant over the Academy,          6 Andy Hendrickson is the lieutenant over most of          7 training. And just last week we got Chris Holmes.          8 He's a lieutenant over advanced training, which I          9 didn't mention before. But that's -- all the          10 training officers take and which includes supervisor          11 training.          12 Q. Do you sit on any committees at Metro?          13 A. So I have a lot of additional duties. So I          14 guess that's what you're asking me for.          15 Q. Yes, sir.          16 A. Hopefully, I'll remember them all. Maybe          17 I'll have to look at my calendar.          18 So I'm the chairman of the pre-termination          19 board, so that's a board that does what I guess you          20 call Loudermill hearings, where it gives the employee          21 the opportunity to say why they should stay on the          22 department.          23 Then I have to write a recommendation to          24 the sheriff to say whether we recommend the person be          25 terminated or not or change his discipline.</p>	<p style="text-align: right;">Page 17</p> <p>1 Q. What's the criteria to determine whether          2 somebody wears the tan uniform like you're wearing          3 today or the BDU?          4 A. So the bureau commander can determine what          5 the uniform is for different squads within his          6 bureau.          7 Q. And is there a set of written criteria as          8 to how to make that determination?          9 A. Yes and no. It's really up to the bureau          10 commander. But you can't put everyone in BDUs. They          11 have most BSU and flex teams on -- all the area          12 commands have the option of wearing the green          13 uniforms or at the bureau commander's discretion          14 plainclothes, depending on their assignment.          15 But the convention center is a little          16 different because they have additional officers that          17 they have specific jobs for that they put them in the          18 green uniforms.          19 Now, if you're going to ask me what they          20 are, I don't know exactly. But I know that they have          21 the flexibility to put more officers in the green          22 BDUs.          23 Q. Have you or do you know of anybody that has          24 considered research as to whether wearing BDUs          25 creates kind of a militarized awareness for the</p>



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6 (Pages 18 to 21)

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<p>1 officer?</p> <p>2 A. I don't think so. It's more for ease of --</p> <p>3 well, first of all, these uniforms are more</p> <p>4 expensive. Those uniforms are a little bit more</p> <p>5 durable for officers that are doing different kinds</p> <p>6 of assignments. Like we have our community-oriented</p> <p>7 policing officers who are dealing with the homeless.</p> <p>8 They're getting dirty all the time. Those uniforms</p> <p>9 are washable. These ones are -- have to be</p> <p>10 dry-cleaned.</p> <p>11 So there's different reasons why. They</p> <p>12 just have to be justified to the bureau commander,</p> <p>13 then he has to authorize it.</p> <p>14 Q. Do you know who the bureau commander was</p> <p>15 for the convention center area command at the time of</p> <p>16 Tashii Farmer --</p> <p>17 A. I think it was Captain Pelletier, but I'm</p> <p>18 not 100 percent. And he's the bureau commander right</p> <p>19 now.</p> <p>20 Q. Are you CIT certified?</p> <p>21 A. If I am, it was over 15 years ago. And I'm</p> <p>22 not currently certified. So you have to keep your</p> <p>23 certification up, and I'm not.</p> <p>24 Q. I recall something in your prior deposition</p> <p>25 of you saying once you get to a certain level of</p>	<p>1 him. Even though he had a gun in his hand, I threw</p> <p>2 him on the ground. And as I was holstering my</p> <p>3 weapon, a security guard who was trying to assist me</p> <p>4 shot him.</p> <p>5 Q. Was that security guard with a hotel or</p> <p>6 casino?</p> <p>7 A. It was on Fremont Street. Some private</p> <p>8 security.</p> <p>9 Q. When you were sergeant, did you ever have</p> <p>10 to come onto the scene after one of your patrol</p> <p>11 officers had used deadly force?</p> <p>12 A. Yes.</p> <p>13 Q. On how many occasions?</p> <p>14 A. How many what?</p> <p>15 Q. On how many occasions, approximately?</p> <p>16 A. I don't recall.</p> <p>17 Q. More or less than five?</p> <p>18 A. Probably less than five. And the</p> <p>19 procedures for officer-involved shooting weren't the</p> <p>20 same then that they are now.</p> <p>21 MR. MCNUTT: Weren't, like were not?</p> <p>22 THE WITNESS: Were not the same. They were</p> <p>23 a lot more. This is what we do, this is how the</p> <p>24 investigation is going to go. I mean, back then it</p> <p>25 was investigated by homicide.</p>
Page 19	Page 21
<p>1 rank, you don't have to maintain certain</p> <p>2 certifications; is that right?</p> <p>3 A. Right, per POST. And the, you know, it's</p> <p>4 really -- I'm not dealing with day-to-day people that</p> <p>5 are -- have mental health issues, so there's no</p> <p>6 reason to keep my certification up.</p> <p>7 Q. Okay. Any time you need a break today,</p> <p>8 just let us know. We're happy to accommodate you. I</p> <p>9 anticipate today going about anywhere from two to</p> <p>10 three hours. So just let us know. Okay?</p> <p>11 A. Okay. I don't know if I have two to three</p> <p>12 hours' worth of information, but you can ask me.</p> <p>13 Q. Have you ever been involved personally in a</p> <p>14 deadly force incident?</p> <p>15 A. I haven't used deadly force, but I was</p> <p>16 involved in an in-custody death a long time ago.</p> <p>17 Q. And what do you recall about that</p> <p>18 incident?</p> <p>19 A. Sure. It was a subject with a gun that I</p> <p>20 was trying to get to put the gun down. And he</p> <p>21 refused. He had the gun in his hand, and there was a</p> <p>22 language issue. He spoke Spanish and was highly</p> <p>23 intoxicated and wasn't understanding what I was</p> <p>24 telling him to do.</p> <p>25 So I got close enough to get my hands on</p>	<p>1 BY MR. LAGOMARSINO:</p> <p>2 Q. Have you ever gone to the scene as either a</p> <p>3 sergeant or a lieutenant for a death that arose out</p> <p>4 of some kind of a neck restraint?</p> <p>5 A. I don't recall any.</p> <p>6 Q. As you sit here, do you recall any deaths</p> <p>7 in your career -- strike that.</p> <p>8 While employed at Metro, do you recall any</p> <p>9 deaths caused by any Metro officer as a result of any</p> <p>10 kind of a neck restraint?</p> <p>11 A. So I know of several cases that were</p> <p>12 brought to my attention in the last deposition that I</p> <p>13 was asked questions about. And I'm aware of those</p> <p>14 cases, but I wasn't involved and don't know the</p> <p>15 details of how exactly it was determined the person</p> <p>16 died because was it the neck restraint, was it the</p> <p>17 intoxication of their either alcohol or drugs in</p> <p>18 their system, and was there other things that</p> <p>19 happened, or was it a physical issue that the person</p> <p>20 had.</p> <p>21 So I know that the person ended up</p> <p>22 deceased, but I don't know the exact determination of</p> <p>23 how that happened.</p> <p>24 Q. Okay. And how many of those do you recall?</p> <p>25 A. I think there was two or three.</p>



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\* \* \* Videotaped Deposition \* \* \*

7 (Pages 22 to 25)

<p style="text-align: right;">Page 22</p> <p>1 Q. And those -- and we'll get to those later</p> <p>2 in the deposition today.</p> <p>3 A. Okay.</p> <p>4 Q. Independently, do you recall any others?</p> <p>5 A. No. I think I remember the one that</p> <p>6 happened before I joined the department, Charles Bush</p> <p>7 maybe.</p> <p>8 Q. What do you recall about that?</p> <p>9 A. Vice officers put a neck restraint on</p> <p>10 someone who was fighting with them and the person</p> <p>11 ended up dying. And so I don't know, was that</p> <p>12 improperly applied neck restraint or were there other</p> <p>13 issues involved, but that was a common one that was</p> <p>14 talked about on the agency.</p> <p>15 Q. In terms of your responsibilities of</p> <p>16 overseeing training, are there prior neck restraint</p> <p>17 incidents that are used as part of the training</p> <p>18 process now?</p> <p>19 A. I don't think that we generally talk about</p> <p>20 specific incidents in training going back 20 or more</p> <p>21 years.</p> <p>22 Q. Okay.</p> <p>23 A. And I certainly -- I don't think that</p> <p>24 that's how we train. We don't train about, you know,</p> <p>25 specific incidents that if you do this, because of</p>	<p style="text-align: right;">Page 24</p> <p>1 people want to go to. But when they ask you to go</p> <p>2 there, you kind of have to take that assignment.</p> <p>3 And it's actually you learn a lot in</p> <p>4 internal affairs. Criminal intelligence is more</p> <p>5 about knowing how to understand and give confidential</p> <p>6 briefings to the sheriff and being trusted with</p> <p>7 confidential investigations. And so I think that</p> <p>8 based on that assignment, that's why I was asked to</p> <p>9 do the next assignment.</p> <p>10 So it's more of a career progression of</p> <p>11 looking at what you're good at and what the sheriff</p> <p>12 trusts you with.</p> <p>13 Q. Okay. Are you familiar with the Department</p> <p>14 of Justice COPS assessment that was performed</p> <p>15 approximately 2012?</p> <p>16 A. Yes.</p> <p>17 Q. Did you have participation in that process?</p> <p>18 A. Yes.</p> <p>19 Q. Generally what was your participation?</p> <p>20 A. I just participated in different groups,</p> <p>21 giving feedback on use of force and use of force</p> <p>22 policy. I wasn't one of the main instructors or</p> <p>23 anything like that. But certainly was involved in</p> <p>24 ensuring that that process was done correctly.</p> <p>25 Q. Did you interact with individuals from the</p>
<p style="text-align: right;">Page 23</p> <p>1 this incident, this will happen.</p> <p>2 Q. Okay. Have you ever applied an LVNR?</p> <p>3 A. Only in training.</p> <p>4 Q. Tell me about that.</p> <p>5 A. Well, as an officer, you are trained to use</p> <p>6 the LVNR throughout the academy, and then you're</p> <p>7 recertified every year how to do the LVNR and then</p> <p>8 different ways and circumstances to use it.</p> <p>9 I just never found the time appropriate in</p> <p>10 my use of force to use that. Most of the people that</p> <p>11 I use force against decided to run and not fight.</p> <p>12 Q. In terms of your responsibilities with the</p> <p>13 IOCP.</p> <p>14 A. Uh-huh.</p> <p>15 Q. How did you get assigned to that? Did you</p> <p>16 volunteer for that?</p> <p>17 A. No. I guess they -- the sheriff asked me</p> <p>18 to go there. So I guess somebody recommended me to</p> <p>19 go there.</p> <p>20 Q. Did you want to go there?</p> <p>21 A. Well, yes. It's a -- it's kind of a</p> <p>22 promotion, I guess. So but it's an important</p> <p>23 assignment. You know, but all the assignments I had</p> <p>24 outside of patrol I was asked to go to, too. You</p> <p>25 know, internal affairs is not the assignment most</p>	<p style="text-align: right;">Page 25</p> <p>1 Department of Justice?</p> <p>2 A. Yes. I participated in interviews and</p> <p>3 things like that.</p> <p>4 Q. And who came out from the DOJ? Was it</p> <p>5 attorneys or agents?</p> <p>6 A. My recollection would be people from the</p> <p>7 COPS office were different -- they were all</p> <p>8 civilians, but I think that some of them did have</p> <p>9 legal training or legal background.</p> <p>10 But some of the interviews were like this</p> <p>11 where you would have different people asking you</p> <p>12 questions, and I couldn't tell you what all their</p> <p>13 backgrounds were.</p> <p>14 Q. Okay. Do you know how many assessments</p> <p>15 COPS performed on Metro? I mean written assessments</p> <p>16 they provided, I guess?</p> <p>17 A. I don't recall the exact number, but there</p> <p>18 was a lot.</p> <p>19 Q. So I'm familiar, there was the first report</p> <p>20 that came out that had a lot of recommendations and</p> <p>21 assessments. And then there was, like, a six-month</p> <p>22 follow-up that came out after that.</p> <p>23 Were you familiar with additional ones that</p> <p>24 were provided to Metro?</p> <p>25 A. I may have read additional follow-ups, but</p>

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## \* \* \* Videotaped Deposition \* \* \*

8 (Pages 26 to 29)

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1 I know that all the recommendations that we were  
2 tasked with were done other than the ones that we  
3 decided were not -- didn't apply to our agency.

4 Q. Without having the benefit of having those  
5 in front of you, do you recall which ones or any of  
6 them that you decided were not going to be applied?

7 A. I used to know. But I don't recall right  
8 off the top of my head. And they were decided by the  
9 sheriff that, okay, this is something that we're not  
10 going to follow. And there was only a couple of  
11 those.

12 Q. That was Sheriff Gillespie at the time?

13 A. I believe so, yes.  
14 (Exhibit I was marked for  
15 identification.)

16 BY MR. LAGOMARSINO:

17 Q. I've provided you with Exhibit I. This is  
18 a document that's been produced by Metro in this  
19 case.

20 I can tell you it was our office that  
21 placed the highlighting on here.

22 A. Okay.

23 Q. Go ahead and just -- I understand there's  
24 quite a few pages here. Have you seen Exhibit I  
25 before?

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1 cities within the United States above a certain  
2 number of population or officers are involved in the  
3 major city chiefs.

4 Q. Were you ever part of any discussions  
5 internally in a meeting type of a setting where the  
6 topic was whether to allow the use of the LVNR at  
7 all?

8 A. Yes.

9 Q. How many do you recall?

10 A. I think that -- I would say a couple. But  
11 not more than three. But it was more of a discussion  
12 about, okay, these are the changes we're  
13 recommending, and there was a give and take of why  
14 are you saying we should keep it versus change it to  
15 a lesser -- a lesser part of the policy where we  
16 reduced it from you can't use it in these  
17 circumstances but you can and how to simplify it.

18 So it was an overall discussion about are  
19 we going to keep it, and if we are going to keep it,  
20 are we going to change policy at all.

21 Q. And how does that work in terms of the  
22 recommendation and -- like, who makes a  
23 recommendation and who makes the decision?

24 A. So I think that it was tasked to IOCP to  
25 make the changes in the use of force. But I think

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1 A. No. I don't think so.

2 Q. Well, let me ask you generally, are you  
3 aware that Metro conducted research after the Farmer  
4 incident regarding whether -- strike that --  
5 assessing other agencies who may have allowed the use  
6 of the LVNR?

7 A. Yes.

8 Q. How did you become aware of that?

9 A. So when the sheriff said, hey, we need to  
10 look at LVNR, and part of that included serving other  
11 agencies, and then looking at our policy and seeing  
12 if we need to make any changes in policy.

13 As part of training -- training is involved  
14 in that, the use of force committee which looks at  
15 the changes at the use of force.

16 And then because of how high profile this  
17 case was, that I became involved in that.

18 So in other words, I wasn't involved in  
19 creating the questions or -- but I did see this now  
20 that I look at it. But I didn't review every one.  
21 It was more of the summary of what the agencies  
22 produced that I was aware of.

23 Q. Okay. What is the Major City Chiefs  
24 Association?

25 A. I think it's just what it says. Major

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1 that it was also involving the use of force committee  
2 which involves people from outside IOCP to be  
3 involved, too. Which includes a lot of training.

4 The actual trainers who were teaching LVNR  
5 and then the trainers wouldn't be involved in the  
6 survey, but they would just be reading the survey and  
7 looking at the results of the survey and policies  
8 from other agencies that they would look at and maybe  
9 change some of the wording because someone may have  
10 better wording than we have. So we're always trying  
11 to get to the best policy that we can.

12 Q. What is your personal opinion on the use of  
13 the LVNR as a use of force option at Metro?

14 MR. ANDERSON: Objection. Form.

15 Go ahead and answer.

16 THE WITNESS: I think that there are times  
17 when it's appropriate to use and the ease of it makes  
18 it better for the officers to use the least amount of  
19 force as possible to make someone comply with their  
20 direction.

21 And there are officers that are better at  
22 it than others and feel more comfortable with it.  
23 But that's no different than some of our other tools  
24 that we use.

25 Some officers like the Taser. Some

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9 (Pages 30 to 33)

<p style="text-align: right;">Page 30</p> <p>1 officers like to go hands-on. Some feel more 2 comfortable with LVNR. 3 And I think that was one of the reasons why 4 we didn't take it away is there are situations where 5 someone is facing away from you that an officer can 6 use the LVNR that's the best tool for that situation 7 in that scenario, and we didn't want to take that 8 away from officers. 9 BY MR. LAGOMARSINO: 10 Q. Okay. Now, you had mentioned earlier in 11 your testimony that after the Farmer incident, the 12 policy was changed to where there were certain 13 circumstances where the LVNR could be used before but 14 could now not be used. 15 A. Right. 16 Q. And I'm assuming that has to do with 17 intermediate level of force options and those type of 18 things? 19 A. Right. 20 Q. Are you able to, without having the policy 21 in front of you -- and understanding you probably 22 don't have a photographic memory -- able to 23 articulate the differences in the policies at this 24 point? 25 A. So the basics of it is, is you could use</p>	<p style="text-align: right;">Page 32</p> <p>1 page 24, it's going to be -- it was Exhibit C that 2 was attached to the responses. And then after that 3 there are some pages that Metro produced with 4 statistics and data. 5 Do you have those in front of you? 6 A. Yes. 7 Q. Have you ever seen these statistics before? 8 A. Yes. 9 Q. And in what context have you seen these 10 statistics? 11 A. So I would say that officer of internal 12 oversight, constitutional policing produces a report 13 of use of force yearly, and then they also produced 14 five year reports that I've seen. 15 Q. Do you know when that started? 16 A. No. 17 Q. So kind of going through the bullets here 18 on the first page, it says, "The following statistics 19 include LVNR data from 2012 year to date 2017." It 20 says: "92 percent of LVNRs are performed by police 21 officers, 8 by correction officers." 22 Next bullet it says: "On average, the LVNR 23 was effective 68 percent of the time. Thus far in 24 2017 the technique has been effective 57 percent of 25 the time." And this was year-to-date through May 15</p>
<p style="text-align: right;">Page 31</p> <p>1 the LVNR as a restraining hold and now you can't. 2 Someone has to be aggressively resisting you to be 3 able to use the LVNR. 4 MR. LAGOMARSINO: Counsel, we've premarked 5 these so we're going to go a little out of order. 6 This is going to be Exhibit 8. 7 (Exhibit 8 was marked for 8 identification.) 9 BY MR. LAGOMARSINO: 10 Q. I've handed you Exhibit 8, which is a 11 compilation type of an exhibit. 12 The first page for the record is Defendant 13 Las Vegas Metropolitan Police Department's First 14 Supplement to Responses to Plaintiff's First Set of 15 Requests for Production of Documents. 16 And going to page 12, the plaintiff asked 17 for copies of all use of force reports filed by 18 members of Las Vegas Metropolitan Police Department 19 from 2004 to the present. Metro initially objected. 20 The parties went through a process of meeting and 21 conferring and narrowing that time period, and then 22 produced certain statistics. So I want to ask you 23 about those statistics here. 24 So if you would go -- this goes all the way 25 to page 24. If you go to the next page after</p>	<p style="text-align: right;">Page 33</p> <p>1 of 2017, which was I believe just prior to the 2 incident in this case. 3 What does it mean -- what does the word 4 "effective" mean in this context when they say it's 5 68 percent effective? 6 A. I believe it means the subject -- the 7 technique was effective. The subject was taken into 8 custody without any other technique or tool having to 9 be used. 10 Q. Do you know if that term -- obviously 11 effective is a fairly -- 12 A. Broad. 13 Q. -- broad term, correct. Thank you. 14 Do you know if that term is defined 15 anywhere if it's effective in this context? 16 A. I don't know where it's defined, but I'm 17 sure there had to be a definition of it to be able to 18 come up with that statistic. 19 But you're right, it is broad, and that 20 what could be effective to me might not be effective 21 to someone else. Because to me an LVNR that's 22 effective means that the subject stopped resisting, 23 and I was able to take him into custody. 24 But if it didn't work and I had to go to a 25 different tool, does that mean it's effective or</p>

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10 (Pages 34 to 37)

<p style="text-align: right;">Page 34</p> <p>1 ineffective? It might just mean that it was easier 2 to use something else. Or another officer arrived 3 and we're able to use hands-on to take that subject 4 into custody. So it's really hard to determine 5 effectiveness. 6 Q. With respect to these statistics, it looks 7 like at least they were generated starting in 2012 8 based on this document. 9 Is that your understanding, at least from 10 2012? 11 A. Yes. And I think that might have to do 12 with this COPS intervention. 13 Q. And then would these statistics be 14 considered on a yearly basis when they're generated 15 by Metro? 16 A. Yes. 17 Q. And you mentioned they would do five-year 18 data as well? 19 A. Yes. 20 Q. So if this is a five-year data report, 21 would you have seen this particular document? 22 A. So I've seen five-year reports, but I can't 23 say specifically. I saw 2012 to 2017. But I know I 24 just reviewed the 2018 report; and so in other words, 25 five-year reports continue on.</p>	<p style="text-align: right;">Page 36</p> <p>1 MR. ANDERSON: Objection. Form. 2 Go ahead. 3 THE WITNESS: Well, based -- I mean, I 4 can't recall exactly all the things that were used in 5 use of force on this case because I know there were 6 strikes, there was Taser and there was LVNR. 7 BY MR. LAGOMARSINO: 8 Q. Right. 9 A. So to me, the effectiveness of all of those 10 together I would say the subject was taken into 11 custody and handcuffed, but some of those techniques 12 were ineffective, and that's why they went to other 13 techniques. 14 Now, overall, I would say that use of force 15 was not effective. Obviously because -- and most use 16 of forces appear -- don't appear like they do in 17 training. 18 But I would say that the LVNR in this case 19 was probably not effective. 20 Q. Do you receive reports either on a daily, 21 weekly, monthly or other regular basis that summarize 22 media reports that could be perceived as negative 23 towards Metro? 24 A. As part of staff, PIO does a report that 25 tells us any time Metro is in the media. So not just</p>
<p style="text-align: right;">Page 35</p> <p>1 Q. I see what you're saying. So they will go 2 2013 to '18? 3 A. Yes. 4 Q. '14 to '19? 5 A. Right. 6 Q. Do documents that are attached here appear 7 to be true and correct copies of the documents 8 generated by Metro with respect to LVNR statistics? 9 A. Yes. 10 Q. Are other use of force options evaluated 11 for effectiveness the same way that the LVNR is 12 evaluated? 13 A. I believe so. But I'm not sure where the 14 effective number comes from. Because it might come 15 from the officer's opinion, is it effective? Or I 16 don't know if it's evaluated in other ways. So I 17 wish I did know. I could tell you. 18 Q. I'm going to ask you a hypothetical 19 question here. There's a difference of opinion in 20 this case, as I'm sure you've heard, as to whether it 21 was a rear-naked choke that was applied or an LVNR 22 that was applied. 23 Assuming hypothetically that it was an LVNR 24 that was applied, would you consider the use of that 25 technique effective in this case?</p>	<p style="text-align: right;">Page 37</p> <p>1 use of force. 2 Q. So even if it was, like, a car accident and 3 somebody is interviewed on the scene from Metro? 4 A. I'm not aware of any car accidents, and I 5 wouldn't review that one because I don't have 6 relation to that. 7 But the example is the one that was in the 8 media, just I think it was yesterday or the day 9 before, from LVNR that was applied to a water seller 10 on the Strip. And that was from 2013. And it wasn't 11 immediately apparent that it was from 2013 when they 12 put it in the media. It looked like it just 13 happened. But it was from five years ago and the 14 technique was applied correctly. Whether or not the 15 water seller needed to be LVNR'd, I don't know. But 16 the technique worked and it was applied 17 appropriately. 18 You know, the question is whether we need 19 to have someone who's conducting a misdemeanor crime 20 LVNR'd. That's separate from was the technique 21 applied correctly and did it work, to me. 22 Q. Right. I saw the video. And it seemed 23 like it was a pretty good angle to see what occurred 24 and you can see the positioning of the -- 25 A. Right.</p>

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11 (Pages 38 to 41)

<p style="text-align: right;">Page 38</p> <p>1 Q. -- hands and so forth. And of course, the</p> <p>2 events leading up to the application were not</p> <p>3 recorded. So as you say, it's hard to say whether it</p> <p>4 was necessary or not.</p> <p>5 A. And we didn't have body cameras at that</p> <p>6 time so you couldn't see the interaction between the</p> <p>7 officers and the person.</p> <p>8 Q. In this video, did the subject pass out?</p> <p>9 A. I think he did. But I sort of dismissed it</p> <p>10 when I heard it was in 2013.</p> <p>11 So I'm aware of it and I saw the technique</p> <p>12 was applied correctly, but I didn't get really that</p> <p>13 deep into it. But that's an example of stuff that is</p> <p>14 sent out by the PIO to us to say, hey, this is in the</p> <p>15 media. So you're aware of it.</p> <p>16 Q. And what do you do with that? Or is it</p> <p>17 just more of an awareness thing?</p> <p>18 A. Yes. More of an awareness thing. But I</p> <p>19 was told by someone else, I don't remember who, but</p> <p>20 that the LVNR was done right, and I looked at it and</p> <p>21 I was like okay, and I was just not that concerned</p> <p>22 with it.</p> <p>23 Q. Do you know if there was a lawsuit in that</p> <p>24 case?</p> <p>25 A. I think there was. And I think it was</p>	<p style="text-align: right;">Page 40</p> <p>1 that Metro sent out questions regarding the LVNR to</p> <p>2 other agencies, have you ever received e-mails from</p> <p>3 other agencies about the use of the LVNR?</p> <p>4 A. I'm sure we have, but I can't recall a</p> <p>5 specific agency or time. But it's very common for</p> <p>6 police agencies to share information on use of force</p> <p>7 or other policies that we use and what is the best</p> <p>8 wording or techniques to be used throughout policing.</p> <p>9 Q. Okay. I want to speak a little bit in</p> <p>10 generalities for the next question. So if I'm wrong</p> <p>11 on the language or the terms of art, please let me</p> <p>12 know.</p> <p>13 But it's my general understanding that if</p> <p>14 an officer is facing a situation where he or she is</p> <p>15 faced with deadly force being used against them,</p> <p>16 there really is no type of force that they're</p> <p>17 precluded from using to save their own life or defend</p> <p>18 themselves; is that correct?</p> <p>19 A. I'm sorry, that was a long question. I</p> <p>20 think it was correct.</p> <p>21 Q. It's like one of those Robert Mueller</p> <p>22 questions, right?</p> <p>23 So is there any use of force option that's</p> <p>24 taken off the table for an officer if that officer is</p> <p>25 facing a situation where their life is in danger?</p>
<p style="text-align: right;">Page 39</p> <p>1 dismissed. But like I said, when I heard it was</p> <p>2 2013, it didn't just happen, then I wasn't as</p> <p>3 concerned with it as I would be if it happened a</p> <p>4 month or a year ago.</p> <p>5 Q. Okay. Getting to back to the research that</p> <p>6 we're talking about, about other cities, whether they</p> <p>7 allow the use of the LVNR or not, do you know how</p> <p>8 that research was conducted?</p> <p>9 A. I can tell you generally how they conduct</p> <p>10 research in OIO, which is they send e-mails out to</p> <p>11 agencies, hey, I think it was a quick survey, a few</p> <p>12 questions, hey, could you answer these questions for</p> <p>13 us. And some agencies respond and some don't.</p> <p>14 Q. Do you -- strike that.</p> <p>15 Does Metro ever get those types of e-mails</p> <p>16 from other agencies as well to your knowledge?</p> <p>17 A. Yes.</p> <p>18 Q. And does Metro respond to those?</p> <p>19 A. Yes. And sometimes I get those and I ask</p> <p>20 people to respond to them based on who sent it and</p> <p>21 then who would be the best person to respond for our</p> <p>22 agency.</p> <p>23 Q. Have you, knowing that Metro -- strike</p> <p>24 that.</p> <p>25 Let me get a clean question here. Knowing</p>	<p style="text-align: right;">Page 41</p> <p>1 A. No.</p> <p>2 Q. Other than that specific situation that we</p> <p>3 just discussed, an officer facing a life or death</p> <p>4 situation, were there any opinions that you recall in</p> <p>5 Metro that the LVNR should be banned except for that</p> <p>6 situation?</p> <p>7 MR. MCNUTT: Objection. Form.</p> <p>8 THE WITNESS: I think there are</p> <p>9 restrictions in policy of when you can use certain</p> <p>10 techniques. And I think that we don't want officers</p> <p>11 to use the LVNR on subjects that have been cap</p> <p>12 stunned.</p> <p>13 I can't recall exactly what the other</p> <p>14 restrictions are. But there certainly are times when</p> <p>15 we restrict officers from using certain uses of</p> <p>16 force.</p> <p>17 BY MR. LAGOMARSINO:</p> <p>18 Q. Were there any restrictions on the LVNR</p> <p>19 being used prior to the Tashii Farmer incident?</p> <p>20 A. Well, just appropriate use of force based</p> <p>21 on the circumstances of that call. So in other</p> <p>22 words, every use of force has to be justified by the</p> <p>23 officer.</p> <p>24 Q. Did you have an opinion as to whether</p> <p>25 Officer Lopera appropriately applied force to Tashii</p>



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12 (Pages 42 to 45)

<p style="text-align: right;">Page 42</p> <p>1 Farmer?</p> <p>2 MR. MCNUTT: Objection. Form.</p> <p>3 MR. ANDERSON: Join.</p> <p>4 THE WITNESS: So when you're looking at</p> <p>5 other people's use of force, it's a different</p> <p>6 standard. You have to -- the officers have to</p> <p>7 articulate why they used force and why the amount of</p> <p>8 force was necessary in that case.</p> <p>9 We didn't really get that from Officer</p> <p>10 Lopera. So you're looking at it just based on your</p> <p>11 opinion and not what Officer Lopera articulated.</p> <p>12 So my opinion was, and I think I stated it</p> <p>13 in a prior deposition, was that based on the</p> <p>14 circumstances, most officers would have chased</p> <p>15 Mr. Farmer. If he walked away and didn't want to</p> <p>16 talk to you, you would let him walk away.</p> <p>17 But when he runs away and goes to a part of</p> <p>18 the casino that most people don't have access to, it</p> <p>19 makes you think there's something wrong or there's</p> <p>20 something going on that would make your curiosity</p> <p>21 pique to the point where you would want to find out</p> <p>22 what's going on with Mr. Farmer.</p> <p>23 So I would have no problem with most</p> <p>24 officers, most officers probably would chase someone</p> <p>25 who runs away from them.</p>	<p style="text-align: right;">Page 44</p> <p>1 oh, there he goes? No. I wouldn't do that either.</p> <p>2 I would want to find out what was going on with</p> <p>3 Mr. Farmer because now any good officer would want to</p> <p>4 know why he was acting the way he was and why he was</p> <p>5 going through that part of the casino.</p> <p>6 BY MR. LAGOMARSINO:</p> <p>7 Q. You're familiar, I'm sure, with the laws of</p> <p>8 trespass, correct?</p> <p>9 A. Yes.</p> <p>10 Q. There was -- to your knowledge, are there</p> <p>11 bright orange letters painted every 50 or 200 yards</p> <p>12 on the Venetian Hotel that say "no trespassing"?</p> <p>13 A. No.</p> <p>14 Q. And to your knowledge, had anybody from the</p> <p>15 Venetian Palazzo requested Mr. Farmer to leave the</p> <p>16 premises?</p> <p>17 A. No.</p> <p>18 Q. Do you believe that based on the</p> <p>19 information that you've received in your</p> <p>20 participation in this case on the use of force board,</p> <p>21 and that was presented to you, that there was</p> <p>22 probable cause to arrest Mr. Farmer for trespassing?</p> <p>23 MR. ANDERSON: Objection. Form.</p> <p>24 Go ahead.</p> <p>25 THE WITNESS: When Mr. Farmer was in the</p>
<p style="text-align: right;">Page 43</p> <p>1 The question is when you catch up to them,</p> <p>2 what do you do and how much force should you or do</p> <p>3 you use, and that's based on what crime you</p> <p>4 articulate that Mr. Farmer has committed. And we</p> <p>5 didn't get that. So I'm putting myself in that place</p> <p>6 of Mr. Lopera, Officer Lopera.</p> <p>7 So I think that -- I think that when you</p> <p>8 use force, you should use force. In other words, we</p> <p>9 don't put our hands on someone unless we're using an</p> <p>10 approved technique because most people don't like</p> <p>11 when people put their hands on you.</p> <p>12 So when you make that decision to put your</p> <p>13 hands on someone, you should put your hands on</p> <p>14 someone and use a technique to take them to the</p> <p>15 ground and to put handcuffs on them if you can</p> <p>16 articulate the justification for an arrest.</p> <p>17 Because now when you put your hands on</p> <p>18 someone and you use force, you should have a charge</p> <p>19 to take them to jail.</p> <p>20 So I can't get in Officer Lopera's mind to</p> <p>21 say what he was doing. But I would say that I would</p> <p>22 not have done it the way that Officer Lopera did.</p> <p>23 Just me as going back to the way I was trained and</p> <p>24 the decisions that I would make that night.</p> <p>25 Now, would I let Mr. Farmer go and be like</p>	<p style="text-align: right;">Page 45</p> <p>1 coffee shop or wherever he was, there was no probable</p> <p>2 cause to arrest him for trespassing.</p> <p>3 When he went through the casino into the</p> <p>4 back under that -- whatever they call it of the</p> <p>5 casino, where he probably wasn't supposed to be and</p> <p>6 wasn't allowed to go, could we have talked to</p> <p>7 Venetian and say was he supposed to be there, is this</p> <p>8 an area that you would consider that he was</p> <p>9 trespassing if he went to, that would take a more</p> <p>10 thorough investigation for me to find out if I had</p> <p>11 probable cause to arrest him for trespassing.</p> <p>12 But based on what I know, I don't think</p> <p>13 Officer Lopera had enough to arrest him for</p> <p>14 trespassing.</p> <p>15 BY MR. LAGOMARSINO:</p> <p>16 Q. There was -- are you familiar that there</p> <p>17 was a bright red sign that said "exit" above the</p> <p>18 doors he went out?</p> <p>19 A. I don't recall. But I would believe that</p> <p>20 if you said there was one.</p> <p>21 MR. LAGOMARSINO: I think we'll just take a</p> <p>22 quick five-minute break and come back.</p> <p>23 THE VIDEOGRAPHER: The time is</p> <p>24 approximately 10:36 a.m. We are going off the</p> <p>25 record.</p>

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13 (Pages 46 to 49)

<p style="text-align: right;">Page 46</p> <p>1 (A recess was taken from 10:36 a.m. 2 to 10:48 a.m.) 3 THE VIDEOGRAPHER: The time is 4 approximately 10:48 a.m. We are back on the record. 5 BY MR. LAGOMARSINO: 6 Q. As part of training, does Metro bring in 7 sometimes outside speakers or experts to provide 8 training to the officers? 9 A. Yes. 10 Q. Are you familiar with the names of any of 11 those experts that Metro may bring in? 12 A. It depends. So the question is kind of 13 broad, but -- we bring in training for all different 14 kinds of classes. Usually use of force is done by 15 our own trainers. 16 Q. Are you familiar with an individual named 17 Dr. William Smock? 18 A. No. 19 Q. Do you know if he's been hired by Metro to 20 provide training? 21 A. I'm not aware of his name or if he's been 22 hired. 23 Q. You have been trained on neck restraints; 24 is that correct? 25 A. Yes.</p>	<p style="text-align: right;">Page 48</p> <p>1 and then in defensive tactics, and then there are 2 scenarios in field training where officers may use 3 force which includes LVNR. And what happens when -- 4 during training when officers use force is a field 5 training officer would discuss with the trainee, 6 okay, what about this technique or that technique, 7 which may include LVNR. 8 But there's no time when a field trainer 9 would say, "LVNR him." 10 Q. Okay. 11 A. It's kind of up to you to use the force 12 that you think is the best for that scenario. 13 But after the scenario, the trainee -- the 14 trainer would say you could have LVNR'd him in that 15 case. 16 Q. Okay. 17 A. That would have been the most appropriate 18 case in that circumstance. 19 Q. And it's fair to say that before the shift, 20 that the field training officer is not going to say, 21 hey, let's go out and look for an LVNR situation 22 tonight? 23 A. Yeah, no. Absolutely not. That would 24 never happen. 25 Q. When you say LVNR is in training, are you</p>
<p style="text-align: right;">Page 47</p> <p>1 Q. If the LVNR is applied incorrectly, do you 2 agree that there's a potential for significant injury 3 or death to the subject? 4 A. Yes. 5 Q. What is the Organization Development 6 Bureau? 7 A. What is that? 8 Q. Yes. 9 A. It's the bureau that works for me that 10 basically is over training. 11 Q. What's field training? 12 A. Field training is when an officer graduates 13 the Academy, he goes through field training for a 14 period of time until he graduates training. 15 Q. And is field training basically shadowing, 16 or what exactly is it? 17 A. No. There's three phases of field 18 training, and in each phase the officer gets more and 19 more freedom to become a police officer until at the 20 last phase, where he is shadowed and we call solo 21 beat status. So the officer is allowed to -- is 22 graded, and then when he graduates he's supposed to 23 be able to handle calls by himself. 24 Q. Does field training address LVNRs? 25 A. So LVNR is basically addressed in training</p>	<p style="text-align: right;">Page 49</p> <p>1 talking about the police academy? 2 A. Yes. 3 Q. And then after the police academy, then 4 there is a series of certification or recertification 5 that has to occur with the LVNR? 6 A. That is correct. 7 Q. What is reality-based training? 8 A. Reality-based training is training officers 9 are required to do where we put them in scenarios 10 where they have to use -- make decisions about what 11 kind of force they should use to resolve that 12 scenario. 13 Q. And is that done on, like, a computer or -- 14 A. No. 15 Q. -- or is it live? 16 A. It's hands-on live where we have role 17 players and they go through a scenario. And then 18 they use force or not use force. Or they go 19 hands-on, or they might have to use their gun where 20 they pull their gun out, and then they don't shoot 21 their gun, but where they would decide what kind of 22 force is necessary to resolve that situation. And 23 then they get feedback on how they performed and what 24 they could do differently. 25 Q. Are you familiar with Michael Glen?</p>



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14 (Pages 50 to 53)

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<p>1 A. Yes.</p> <p>2 Q. I forget his rank, is it officer?</p> <p>3 A. He got promoted to sergeant now.</p> <p>4 Q. And is he a subject matter expert in the</p> <p>5 LVNR?</p> <p>6 A. Yes.</p> <p>7 Q. After this incident, did he create a</p> <p>8 training video describing what the LVNR was?</p> <p>9 A. I'm not sure when he created the video. So</p> <p>10 yes, he created a video. But I thought there was</p> <p>11 some videos that he did before this incident, talk</p> <p>12 about training, but it could have been after.</p> <p>13 Q. Are those videos considered reality-based</p> <p>14 training?</p> <p>15 A. No. They were in addition to reality-based</p> <p>16 training.</p> <p>17 Q. Are you familiar specifically with what</p> <p>18 reality-based training exists with respect just to</p> <p>19 the LVNR?</p> <p>20 A. No.</p> <p>21 Q. Do you know if there is?</p> <p>22 A. I don't think so.</p> <p>23 Q. Now, part of your job responsibilities</p> <p>24 relate to human resources you alluded to.</p> <p>25 A. Yes.</p>	<p>1 officer may be facing termination and they are</p> <p>2 allowed to retire to retain their benefits?</p> <p>3 A. So I am familiar with all the different</p> <p>4 processes. We have -- we also have a</p> <p>5 non-confirmation hearing, which I've done some of</p> <p>6 those, and that would apply to people that are on</p> <p>7 probation.</p> <p>8 And if they resign prior to being</p> <p>9 non-confirmed, we say that they resigned.</p> <p>10 We allow people to resign prior to</p> <p>11 non-confirmation hearing. Like, at any time someone</p> <p>12 could resign. They could retire.</p> <p>13 But if they resign pending discipline or</p> <p>14 non-confirmation, we do note that in labor relations.</p> <p>15 Q. So for example, Sergeant Crumrine was not</p> <p>16 confirmed, correct? Well, the story continued after</p> <p>17 he was not confirmed, correct?</p> <p>18 A. That's correct.</p> <p>19 Q. So Sergeant Crumrine was on probation as a</p> <p>20 sergeant at that time, correct?</p> <p>21 A. Right.</p> <p>22 Q. And then the decision was made at Metro to</p> <p>23 not confirm him?</p> <p>24 A. That's correct.</p> <p>25 Q. And then he disputed that; is that correct?</p>
Page 51	Page 53
<p>1 Q. And are you the ultimate decision-maker as</p> <p>2 to whether somebody is going to be terminated or not?</p> <p>3 A. So the human resources part is separate</p> <p>4 from my additional duty which is pretermination board</p> <p>5 chairman.</p> <p>6 So you've kind of conflated those two. But</p> <p>7 there's a board that meets. And it is myself as</p> <p>8 deputy chief, a commissioned captain and a civilian</p> <p>9 director. And each board is -- could be different</p> <p>10 people on it.</p> <p>11 And then the ultimate decision is the</p> <p>12 sheriff. But what happens is I write a memo to him</p> <p>13 based on what the board finds and recommend to the</p> <p>14 sheriff whatever we recommend. And then he's the</p> <p>15 ultimate decision-maker.</p> <p>16 And most of the time he agrees with me, but</p> <p>17 not all of the time.</p> <p>18 Q. Okay. With Officer Lopera, was he allowed</p> <p>19 to retire in lieu of being terminated?</p> <p>20 MR. MCNUTT: Objection. Form.</p> <p>21 MR. ANDERSON: Join.</p> <p>22 THE WITNESS: I'm not sure what his -- the</p> <p>23 disposition was for him.</p> <p>24 BY MR. LAGOMARSINO:</p> <p>25 Q. Are you familiar with that process where an</p>	<p>1 A. He went to arbitration.</p> <p>2 Q. Who was the arbitrator?</p> <p>3 A. I don't recall. And I wasn't involved in</p> <p>4 the arbitration for that. That was Sheriff Kelly.</p> <p>5 Q. Who participates in that arbitration, do</p> <p>6 you know? Maybe not that specific one but in general</p> <p>7 the arbitration process?</p> <p>8 A. So I represent the department in a lot of</p> <p>9 arbitrations because I am on the pretermination</p> <p>10 board. And they keep calling me in to ask what my</p> <p>11 recommendation was and why in the cases I'm involved</p> <p>12 in.</p> <p>13 So what happens in an arbitration is the</p> <p>14 department presents their case to the arbitrator, and</p> <p>15 the employee presents his case and the arbitrator</p> <p>16 makes a decision. And that applies to all the people</p> <p>17 that we terminate.</p> <p>18 Q. How is the arbitrator selected?</p> <p>19 A. I believe there's a list that the</p> <p>20 department submits a number of arbitrators and the</p> <p>21 union submits a number of arbitrators and I think</p> <p>22 they alternate who chooses. But I'm not exactly</p> <p>23 sure.</p> <p>24 Q. Okay.</p> <p>25 A. I just show up and testify.</p>

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15 (Pages 54 to 57)

<p style="text-align: right;">Page 54</p> <p>1 Q. Okay. Ultimately, what happened with                  2 Sergeant Crumrine in the arbitration?                  3 A. The arbitrator ruled that he did enough to                  4 keep his job.                  5 Q. So is he now back to being a sergeant?                  6 A. He's back to being a sergeant.                  7 Q. Did you write the recommendation letter for                  8 non-confirmation to Sheriff Lombardo?                  9 A. No. That was Sheriff Kelly.                  10 Q. And Sheriff Kelly wrote a letter, to your                  11 knowledge, to Sheriff --                  12 A. He writes a memo to recommend                  13 non-confirmation and the sheriff agreed with him.                  14 Q. What about with respect to Officers Tran                  15 and Flores?                  16 A. They weren't on probation, and I don't                  17 think that they received any discipline in this case.                  18 Q. Have you ever heard of an officer being                  19 terminated for improperly using an LVNR?                  20 A. I don't think so.                  21 Q. You testified earlier that some of the                  22 technology part of your responsibilities has been                  23 shifted over. Does that include body cameras?                  24 A. Yes.                  25 Q. Were you in charge of oversight of body</p>	<p style="text-align: right;">Page 56</p> <p>1 Q. When would you feel that it was appropriate                  2 pursuant to Metro policy for any officer who was on                  3 the scene to shut off their body camera?                  4 A. So officers are required to keep the body                  5 camera on while they're involved with a suspect.                  6 When the incident is over, they can turn the body                  7 camera off or when they're involved in discussions                  8 with their sergeant about what happened.                  9 Q. They're allowed to turn it off?                  10 A. Yes.                  11 Q. Are they allowed to turn -- strike that.                  12 Are officers allowed to turn their body                  13 camera off when they're having discussions with other                  14 officers about what happened?                  15 A. Yes.                  16 Q. Why is that?                  17 A. Because -- do you mean why are they allowed                  18 to turn it off?                  19 Q. Right.                  20 A. So the body camera policy, although it was                  21 written before I was involved, is meant to capture                  22 what happened during that incident and not to                  23 infringe on the officer's rights about to discuss why                  24 they did what they did.                  25 Q. You're on the use of force board, right?</p>
<p style="text-align: right;">Page 55</p> <p>1 cameras in May of 2017?                  2 A. Yes.                  3 Q. What's the general purpose of having the                  4 body camera being activated?                  5 A. So the officers' actions can be captured                  6 not only for the department but for the public to be                  7 able to see how officers interacted during this call.                  8 Q. Have you reviewed body camera footage in                  9 this case?                  10 A. Yes.                  11 Q. When would you feel it would be appropriate                  12 for an officer who was involved in this case to turn                  13 off the body camera? And let me lay some foundation                  14 there.                  15 So you had Officers Tran, Flores and Lopera                  16 and Sergeant Crumrine involved with Tashii Farmer,                  17 correct?                  18 A. Yes.                  19 Q. And then a whole host of other officers                  20 showed up at the scene including some that ultimately                  21 attempted chest compressions, correct?                  22 A. Yes.                  23 Q. And then at some point emergency personnel                  24 arrived and Tashii Farmer was taken away, correct?                  25 A. Yes.</p>	<p style="text-align: right;">Page 57</p> <p>1 A. Yes.                  2 Q. Is that the same thing as a tactical review                  3 board?                  4 A. So I'll explain the use of force board. So                  5 there is, the use of force board involves civilians.                  6 There's four civilians involved in every use of force                  7 board. And it is their job to determine, along with                  8 three members of the department, whether the use of                  9 force was justified or not.                  10 And there's four dispositions that we use.                  11 I guess I could try to remember them if I can.                  12 Q. Sure.                  13 A. Administrative approval, tactics                  14 decision-making, policy training failure or                  15 administrative disapproval.                  16 And so what we're trying to determine is                  17 was the use of force justified by law and within                  18 policy. And then after that part's over, that's the                  19 use of force board, the tactics decision -- the                  20 tactics are then reviewed in the tactics review                  21 board.                  22 Q. And is there a disposition from the tactics                  23 review board?                  24 A. What happens in the tactics review board is                  25 each officer's actions and supervisor's actions are</p>

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16 (Pages 58 to 61)

<p style="text-align: right;">Page 58</p> <p>1 looked at separately. So yes, there's a disposition 2 where they look at a lot of different factors within 3 the tactics review board, and we agree with CIRT or 4 disagree with CIRT or modified their findings during 5 the use of -- during the tactics review board. 6 And so there's -- I could guess, maybe 10 7 or 12 different areas that they look at, maybe 15, 8 I'm not sure. And it's anywhere from the radio 9 traffic to the communications. In other words, 10 dispatchers and how that's done. 11 Whether there was deescalation, what the 12 use of force was, is it deadly force or other force. 13 Was the supervisor's role done correctly. Was the 14 POST use of force things done correctly. Was the 15 training up to date. 16 And I'm sure I'm missing some, but there's 17 a lot of different things that we look at during the 18 tactical review board that are part of standard 19 procedure. 20 Q. Okay. At the use of force board, is there 21 a presentation made by CIRT? 22 A. Yes. 23 Q. Where physically in the building is it 24 made? 25 A. In headquarters there's an actual room,</p>	<p style="text-align: right;">Page 60</p> <p>1 Q. I'm trying to put it together here. So 2 there's basically one big presentation. 3 A. Yep. 4 Q. And you've got use of force board is 5 present. 6 A. And we take a break and we vote on that. 7 And then there's another presentation on the tactics. 8 Q. So a separate presentation? 9 A. Yes. 10 Q. Are tactics -- strike that. 11 Are members of the tactics board present 12 for the use of force board presentation? 13 A. No. The assistant sheriff is there, but 14 he's not a voting member of the use of force board. 15 Q. And I'm assuming during that presentation, 16 the officers there, the subject officer is present 17 for the presentation, correct? 18 A. Yes. 19 Q. And is his or her union representative 20 there with them? 21 A. They're there during the presentation, but 22 not during the voting or the deliberations. 23 Q. So they leave the room basically? 24 A. Yes. 25 Q. Are these recorded or with a recording</p>
<p style="text-align: right;">Page 59</p> <p>1 there's a room that we use for it. It's called the 2 action room. It's the LVMPD conference center, but 3 it's generally referred to as the action room. 4 Q. So who is present during that presentation? 5 You have the seven people on the board? 6 A. Yes. 7 Q. And then who else? 8 A. So the -- in addition to the use of force 9 board, we go into the tactical review board. The 10 officers chain of command is there, which is usually 11 represented by the bureau commander. 12 And then we have a tactical expert, a peer 13 member for each officer involved. 14 So if it's an officer, it's a peer officer. 15 If it's a sergeant, it's a peer sergeant. 16 Lieutenant, peer lieutenant. 17 And each person votes based on that person 18 involved. In other words, if there's an officer 19 involved, the peer is allowed to vote. If there's a 20 sergeant, the peer sergeant votes and the chain of 21 command. And then myself and the assistant sheriff 22 are involved in it. And we have a vote and give 23 feedback and ask questions and we deliberate. It's 24 just a regular board. I don't know how else to 25 explain it.</p>	<p style="text-align: right;">Page 61</p> <p>1 device or a court reporter? 2 A. The recording is done by the board and by 3 the union. So there's usually two recordings. 4 Q. So were you on Lopera's use of force board? 5 A. Yes. 6 Q. And who else was with you on that board? 7 At least the non-civilians. 8 A. Yeah, I don't recall. I know Sheriff Kelly 9 was on there. And I believe it was Captain 10 Pelletier. And then I don't remember who was the 11 peer member. And there was a tactical expert, too. 12 And I don't remember who that was either. 13 It wasn't much of a board because Lopera 14 didn't testify. 15 Q. After he didn't testify, were there 16 deliberations on the use of force board? 17 A. We still continued with the board for 18 Officer Tran, Officer Flores, Sergeant Crumrine. 19 Q. Was there a disposition for Lopera out of 20 that board? 21 A. Yes. 22 Q. Do you recall specifically what it was? 23 A. No, I don't. And I do have a problem 24 deciding, remembering the dispositions. Because what 25 happens in the board is Sheriff Kelly, we have the</p>

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17 (Pages 62 to 65)

<p style="text-align: right;">Page 62</p> <p>1 board, and then Sheriff Kelly writes a memo to the 2 sheriff. And so he's more involved in the 3 dispositions of what happens to the people involved. 4 In other words, training or some kind of 5 discipline or for Sergeant Crumrine, he was the 6 non-confirmation recommendation was made to the 7 sheriff. But that's all done confidentially between 8 Sheriff Kelly and the sheriff. So I don't get to see 9 that. 10 Q. So do you know what the dispositions were 11 for those four individuals? 12 A. I only know that Crumrine was recommended 13 that he be non-confirmed as a probationary sergeant. 14 And I don't know the other ones. Although we did 15 discuss it. 16 Q. And are the deliberations recorded? 17 A. No. 18 Q. So then going to the tactical review board 19 aspect of it, is CIRT also making a presentation in 20 that setting as well? 21 A. So what happens is CIRT makes their 22 presentation for the use of force board. And then we 23 vote on the use of force. And then they come back 24 and do another presentation related to the tactics, 25 tactical review board.</p>	<p style="text-align: right;">Page 64</p> <p>1 Q. And is it your opinion that Sergeant 2 Crumrine did not do enough to intervene? 3 A. It's still my opinion, even though the 4 arbitrator didn't agree with me. 5 Q. Do you know how the citizens are selected 6 to be on those boards? 7 A. I don't know how the process works. 8 Q. Do you recall any of the names of the 9 citizens on the Lopera, Crumrine, Tran, Flores board? 10 A. I don't recall. There's been too many 11 boards since then. I know that it's spelled out in 12 the policy of how long they can be on the board and 13 they do, I think they serve a two-year term or 14 three-year term. I don't know. 15 Q. To your knowledge, do they -- do they apply 16 to be on the board? 17 A. Yes. 18 Q. And are they compensated? 19 A. No. 20 Q. Do they have voting rights? 21 A. Voting rights? 22 Q. As to a determination of the disposition in 23 the -- 24 A. Yes. That's the whole purpose. There's 25 more citizens voting than department members. So</p>
<p style="text-align: right;">Page 63</p> <p>1 So it's separate. 2 Q. Okay. Were there any findings that you can 3 recall from the tactical review board that you can 4 share? 5 A. I don't recall. I'm sorry. 6 Q. That's okay. 7 Specifically let me just ask you your 8 opinion. Did Lopera utilize deescalation techniques? 9 A. I don't recall any deescalation that I saw 10 him use. 11 Q. And did he lack deadly force? 12 MR. ANDERSON: Objection. Form. 13 MR. MCNUTT: Objection. Form. 14 THE WITNESS: I did not see him use deadly 15 force. 16 BY MR. LAGOMARSINO: 17 Q. Were there any training issues that you had 18 issues with? 19 A. I'm sure there were. I don't recall 20 specifics. And more concerning Sergeant Crumrine 21 than the officers. 22 Q. You testified in your prior deposition 23 about Sergeant Crumrine not doing enough to 24 intervene; is that correct? 25 A. Yes.</p>	<p style="text-align: right;">Page 65</p> <p>1 they have four votes and we have three. 2 But generally, the votes are pretty 3 unanimous. Not always, but I run the use of force 4 board just -- it's kind of the way the policy works. 5 The assistant sheriff runs the board, but when it 6 comes to the deliberations, he doesn't vote and I run 7 the board and explain the dispositions to everyone on 8 the board before we vote. 9 And we discuss and deliberate just like any 10 other group. 11 Q. Do you recall whether or not the duty to 12 intervene was evaluated with respect to Tran and 13 Flores? 14 A. It was evaluated -- this is all part of the 15 tactics review board not the use of force 16 disposition -- use of force board. Yes, it certainly 17 was discussed. 18 Q. And did the review board, the tactics 19 review board, determine that Tran and Flores 20 satisfied their duty to intervene? 21 A. I don't know exactly what the disposition 22 was for Tran and Flores. That was -- so it's not 23 100 percent one way or the other. But that would be 24 written by Sheriff Kelly. 25 I can expand on that if you would like.</p>

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18 (Pages 66 to 69)

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1 Q. Yes, please.

2 A. So it was our opinion that Tran and Flores  
3 are dealing with Farmer, and the duty to intervene  
4 would be more on Sergeant Crumrine because he was  
5 standing up overlooking the whole scene. Because if  
6 you're trying to handcuff someone, your focus is on  
7 that. And one who is standing above that would have  
8 a better view of who is doing what and how or to what  
9 to do to intervene.

10 In other words, Sergeant -- and that's what  
11 I meant earlier when I said that Sergeant Crumrine  
12 didn't understand his role in overseeing this use of  
13 force.

14 Q. We've had a number of witnesses address the  
15 duty to intervene so I'm going to go through it  
16 pretty quickly here.

17 A. Okay.

18 Q. The duty to intervene isn't just saying  
19 "stop." It doesn't end there, correct?

20 MR. ANDERSON: Objection. Form.

21 THE WITNESS: I agree with you. It's more  
22 than just saying "that's enough" or "stop."

23 BY MR. LAGOMARSINO:

24 Q. In other words, if the duty to intervene  
25 requires the use of a physical act such as,

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1 her by a police officer who is trying to effect a  
2 lawful arrest, that the citizen has a right to use  
3 force against the officer to defend themselves?

4 MR. ANDERSON: Objection. Form.

5 THE WITNESS: I'm not sure if you're asking  
6 me is it my opinion or do we train that way.

7 BY MR. LAGOMARSINO:

8 Q. Do you train on that?

9 A. I don't believe we train on what citizens  
10 can or can't do when officers are using inappropriate  
11 or excessive force. No, we don't train that.

12 Q. Does Metro utilize POST training, Peace  
13 Officer Standards and Training?

14 A. Yes. Since you brought that up, I'm on the  
15 state POST board appointed by the governor. So  
16 that's another duty I forgot since you reminded me,  
17 though.

18 Q. Are you familiar with Detective Alsup and  
19 Detective Colon?

20 A. Yes.

21 Q. They performed the FIT investigation in  
22 this case?

23 A. That's correct.

24 Q. Have you had experience interacting with  
25 them in the past?

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1 hypothetically, removing somebody's hand from an  
2 LVNR, that could be required in any given situation?

3 MR. ANDERSON: Objection. Form.

4 MR. LAGOMARSINO: That is a bad question.

5 BY MR. LAGOMARSINO:

6 Q. Talk to me about your understanding of how  
7 the duty to intervene can be satisfied by using  
8 physical acts.

9 MR. ANDERSON: Objection. Form.

10 THE WITNESS: Sure. I think that a duty to  
11 intervene is more than just saying "stop." It may  
12 mean using hands, your hands, or directing someone to  
13 stop the action that's inappropriate.

14 BY MR. LAGOMARSINO:

15 Q. In terms of training Metro officers, are  
16 they trained that a citizen has the right to use  
17 reasonable force in self-defense against an officer  
18 who is using excessive force against that citizen?

19 MR. ANDERSON: Objection. Form.

20 MR. MCNUTT: Join.

21 THE WITNESS: I don't believe that we train  
22 that.

23 BY MR. LAGOMARSINO:

24 Q. Is your understanding that if a citizen is  
25 having excessive force used against them or him or

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1 A. Yes.

2 Q. Also did you have experience interacting  
3 with Sergeant McDonald?

4 A. Yes.

5 Q. Did Sergeant McDonald oversee -- strike  
6 that.

7 Did Sergeant McDonald oversee Detective  
8 Alsup and Detective Colon?

9 A. Yes.

10 Q. Do you have any criticism of their  
11 investigation in this case?

12 A. No.

13 Q. Have you ever had any criticism of them?

14 A. I think I answered this before in the last  
15 deposition. That I don't know about criticism,  
16 because criticism is kind of a broad term.

17 So, yes, I've given them feedback on their  
18 performance and things that they could do better.  
19 But I think they're excellent detectives. And  
20 Sergeant McDonald has worked for me here and also  
21 worked for me in convention center. He's a good  
22 sergeant.

23 Q. Did you have any criticism or feedback for  
24 them in this particular case?

25 A. I don't recall any.



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19 (Pages 70 to 73)

<p style="text-align: right;">Page 70</p> <p>1 Q. You were asked the following question in 2 your last deposition so I want to see if you still 3 have the same position. 4 Hypothetically, a sergeant of an officer 5 tells his officer to release a hold twice, does that 6 sergeant have a duty thereafter, having asked him 7 twice to release the hold, to check and make sure 8 that he's released the hold? 9 MR. ANDERSON: Objection. Form. 10 THE WITNESS: Yes. I think he should. 11 BY MR. LAGOMARSINO: 12 Q. Did you have an opinion as to whether 13 Lopera's use of the Taser was excessive on 14 Mr. Farmer? 15 MR. MCNUTT: Objection. Form. 16 THE WITNESS: It was excessive. 17 BY MR. LAGOMARSINO: 18 Q. And did you have an opinion as to whether 19 Lopera striking Mr. Farmer was excessive? 20 MR. MCNUTT: Objection. Form. 21 THE WITNESS: That was a little bit harder 22 to determine because I think that the use of the word 23 "strike" is something that's hard to determine 24 because they said 10 to 12 strikes, and it was hard 25 to say whether, how many times Officer Lopera struck</p>	<p style="text-align: right;">Page 72</p> <p>1 And then through that chain of command all 2 the way up to the under sheriff and then it would be 3 approved. 4 Q. What was your opinion on the use of force 5 policy that was in effect at the time of the Tashii 6 Farmer incident? 7 MR. ANDERSON: Objection. Form. 8 BY MR. LAGOMARSINO: 9 Q. In terms of being simple or hard to 10 understand or somewhere in between? 11 A. So I didn't have a problem with the policy 12 at the time. But during the review when they made -- 13 recommended changes, I agreed with those changes that 14 it was simpler and easier to understand for the 15 officers and it was probably a better policy. 16 But it's my opinion on all the times we 17 make changes, we make changes to make the policy 18 better and to make it easier to understand. 19 MR. LAGOMARSINO: Do you want to take 20 another five-minute break? Normally we take a lunch, 21 but I'm only going to have about probably another 22 half hour left. So do you want to just power through 23 instead of taking a long lunch? It's up to you. 24 MR. ANDERSON: It's up to you. 25 THE WITNESS: It's up to me?</p>
<p style="text-align: right;">Page 71</p> <p>1 Mr. Farmer. He certainly threw a lot of punches, but 2 I don't know how many actually struck him. 3 BY MR. LAGOMARSINO: 4 Q. Can you talk in general, as you did at the 5 last deposition, about how Metro changes policies 6 specifically with respect to the use of force? 7 A. Sure. We're always trying to get better 8 with our policies and make them simple and easy for 9 officers to understand. And usually use of force 10 policies are changed by IOCP as part of their job. 11 In other words, they're the ones that oversee use of 12 force for the agency. But they're not always the 13 ones that have ideas about changing the policy. 14 But it would flow through them. And in 15 general, use of force policies changed as a result of 16 a critical incident. 17 Policies in general are -- the wording has 18 changed. The recommendation has changed to make it 19 better either through OIO or through the use of force 20 committee. The policy has changed. It goes out for 21 review. The people give feedback on what the 22 policy -- if it's better or more effective. And then 23 that feedback is taken in and the policy goes back 24 out for a chain of command review through OIO or 25 IOCP.</p>	<p style="text-align: right;">Page 73</p> <p>1 MR. MCNUTT: I'm going to have an hour 2 after he's done. I mean, it may not take an hour, 3 but I mean, I want you to -- let's budget an hour, so 4 to factor in your decision. 5 THE WITNESS: Well, I would rather have 6 lunch than go another hour and a half, two hours, 7 whatever. 8 MR. LAGOMARSINO: Why don't we take an 9 early lunch. That will give me a chance to pare down 10 my questions even more. 11 THE WITNESS: Okay. 12 MR. LAGOMARSINO: What time do you want to 13 come back? It's 11:30. Do you want to say 12:45? 14 MR. ANDERSON: That's good. 15 THE VIDEOGRAPHER: The time is 16 approximately 11:33 a.m. We are going off the 17 record. 18 (A recess was taken from 11:33 a.m. 19 to 12:54 p.m.) 20 THE VIDEOGRAPHER: The time is 21 approximately 12:54 p.m. We are back on the record. 22 BY MR. LAGOMARSINO: 23 Q. I had an opportunity to pare down a lot of 24 my questions so it will be fairly brief -- 25 A. Thank you. I meant that as a compliment.</p>

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\* \* \* Videotaped Deposition \* \* \*

20 (Pages 74 to 77)

<p style="text-align: right;">Page 74</p> <p>1 Craig is going to -- go ahead.</p> <p>2 Q. All right. In this case, are you aware</p> <p>3 that Brian Yant was the union representative for</p> <p>4 Kenneth Lopera?</p> <p>5 A. Yes.</p> <p>6 Q. Based on your employment with the</p> <p>7 Department since 1992, were you aware of Brian Yant's</p> <p>8 involvement in three controversial officer-involved</p> <p>9 shootings?</p> <p>10 MR. ANDERSON: Objection. Form.</p> <p>11 THE WITNESS: No. I was aware of one of</p> <p>12 them. I don't know -- I might -- if I was reminded I</p> <p>13 would probably know the other ones. But I know the</p> <p>14 main one.</p> <p>15 BY MR. LAGOMARSINO:</p> <p>16 Q. Okay. Well, I'll ask and I'll rephrase the</p> <p>17 question because I think the counsel probably had an</p> <p>18 issue with the word "controversial." So I'll</p> <p>19 rephrase.</p> <p>20 Were you aware that Brian Yant was involved</p> <p>21 in three officer-involved shootings?</p> <p>22 A. No.</p> <p>23 Q. You had referenced in answer to your</p> <p>24 earlier question about a shooting. Did that shooting</p> <p>25 involve Trevon Cole?</p>	<p style="text-align: right;">Page 76</p> <p>1 Q. You had no involvement of that from an HR</p> <p>2 perspective or any other perspective?</p> <p>3 A. No.</p> <p>4 Q. I asked you earlier in the deposition about</p> <p>5 whether your opinion was that the use of the Taser</p> <p>6 was excessive and whether the striking was excessive,</p> <p>7 so I'm not going to reask you those questions.</p> <p>8 Do you have an opinion as to whether the</p> <p>9 use of the neck restraint by Officer Lopera was</p> <p>10 excessive in this case?</p> <p>11 MR. MCNUTT: Objection. Form.</p> <p>12 THE WITNESS: I think the use of the</p> <p>13 LVNR -- so I'm sorry, can you just rephrase the</p> <p>14 question?</p> <p>15 BY MR. LAGOMARSINO:</p> <p>16 Q. So I'm going to generally use the term</p> <p>17 "neck restraint" as opposed to "LVNR" or "rear-naked</p> <p>18 choke."</p> <p>19 Regardless of which of those it was, do you</p> <p>20 believe that Officer Lopera's use of that restraint</p> <p>21 for the period of time that he utilized it was</p> <p>22 excessive in this situation?</p> <p>23 A. Yes.</p> <p>24 (Exhibit 9 was marked for</p> <p>25 identification.)</p>
<p style="text-align: right;">Page 75</p> <p>1 A. Yes.</p> <p>2 Q. And that was the gentleman who was flushing</p> <p>3 marijuana down the toilet, and Brian Yant shot him</p> <p>4 with an AR15 and killed him, correct?</p> <p>5 A. Yes.</p> <p>6 Q. Did you have any involvement at all in that</p> <p>7 investigation, administratively or otherwise?</p> <p>8 A. No. Nothing.</p> <p>9 Q. And was it your understanding that Trevon</p> <p>10 Cole was unarmed?</p> <p>11 A. Yes.</p> <p>12 Q. Were you -- if -- I'll try to remind you</p> <p>13 and see if you can recall. There was an incident</p> <p>14 with an individual who they referred to as the candy</p> <p>15 bar robber. And it was alleged that he had stolen</p> <p>16 some candy from a convenience store. Brian Yant was</p> <p>17 chasing him and shot him in the back.</p> <p>18 Were you aware of that particular incident?</p> <p>19 A. No. I wasn't.</p> <p>20 Q. And then there was another incident before</p> <p>21 that where there was an individual some distance</p> <p>22 away, 20 yards or so, who had a baseball bat in his</p> <p>23 hand, and Brian Yant shot him.</p> <p>24 Were you aware of that one?</p> <p>25 A. No, I'm not.</p>	<p style="text-align: right;">Page 77</p> <p>1 BY MR. LAGOMARSINO:</p> <p>2 Q. Earlier in the deposition, I asked you some</p> <p>3 questions about whether a citizen has a right to use</p> <p>4 force against an officer to defend him or herself.</p> <p>5 And I believe it was your testimony that you said</p> <p>6 that Metro doesn't train on it. So I want to ask you</p> <p>7 a follow-up to that question.</p> <p>8 So I've placed in front of you a document</p> <p>9 that's been produced in this case by Metro, Crumrine,</p> <p>10 Tran and Flores in the fifth supplement to their</p> <p>11 initial Rule 26(A)(1)(A) disclosure of witnesses and</p> <p>12 exhibits.</p> <p>13 We've produced a number of documents, but</p> <p>14 I've only handed you the one that I have questions on</p> <p>15 here.</p> <p>16 So if you turn to page 14 of the document.</p> <p>17 Under number 8, it's been identified, some documents</p> <p>18 produced as LVMPD, Ethical Use of Force Course, LVMPD</p> <p>19 420 through 719.</p> <p>20 A. I see that.</p> <p>21 Q. So we've attached some of those pages here.</p> <p>22 MR. ANDERSON: Just for the record, Andre,</p> <p>23 I would say this was produced in our initial</p> <p>24 disclosures, not the fifth. I don't care but...</p> <p>25 MR. LAGOMARSINO: No, thank you. Sorry.</p>



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21 (Pages 78 to 81)

<p style="text-align: right;">Page 78</p> <p>1 BY MR. LAGOMARSINO:</p> <p>2 Q. In the attachment, do you see the bottom</p> <p>3 has something called Bates numbers where it says --</p> <p>4 A. Yep, I see it.</p> <p>5 Q. So if you go to LVMPD 420, 0420.</p> <p>6 A. Okay.</p> <p>7 Q. It appears to be a cover page. And it</p> <p>8 says: "POST Commission, Peace Officers' Standards</p> <p>9 and Training, Ethical Use of Force."</p> <p>10 Do you have that in front of you?</p> <p>11 A. Yes.</p> <p>12 Q. And it says that 2015 on the bottom</p> <p>13 left-hand corner.</p> <p>14 Does this appear to be a cover page that's</p> <p>15 commonly used in training for Metro?</p> <p>16 A. No.</p> <p>17 Q. Have you ever seen this before?</p> <p>18 A. I don't recall ever seeing it.</p> <p>19 Q. All right. And then are you aware if Metro</p> <p>20 has a course called POST ethical use of force?</p> <p>21 A. I don't believe we do. But that doesn't</p> <p>22 mean we do or don't. I've never heard of it, but it</p> <p>23 could be called something slightly different. When</p> <p>24 POST has these courses, we generally meet their</p> <p>25 criteria, but we could call it a different name.</p>	<p style="text-align: right;">Page 80</p> <p>1 EXAMINATION</p> <p>2 BY MR. MCNUTT:</p> <p>3 Q. Sheriff McGrath, my name is Dan McNutt. We</p> <p>4 met earlier. I represent Ken Lopera. I've got a few</p> <p>5 questions for you.</p> <p>6 A. Thanks. Chief McGrath.</p> <p>7 Q. I sorry, Chief McGrath.</p> <p>8 A. I just didn't want you to keep going with</p> <p>9 the sheriff for your questions.</p> <p>10 Q. I don't -- even if I did, I don't think we</p> <p>11 could write you in on the ballot.</p> <p>12 A. No.</p> <p>13 Q. Is being under the influence of a</p> <p>14 controlled substance a crime in the state of Nevada?</p> <p>15 A. Yes.</p> <p>16 Q. Is carjacking a crime in the state of</p> <p>17 Nevada?</p> <p>18 A. Yes.</p> <p>19 Q. Is trespassing a crime in the state of</p> <p>20 Nevada?</p> <p>21 A. Yes.</p> <p>22 Q. Striking a police officer a crime in the</p> <p>23 state of Nevada?</p> <p>24 A. Yes.</p> <p>25 Q. If so, then why did Kelly McMahaill say that</p>
<p style="text-align: right;">Page 79</p> <p>1 Q. Okay. All right.</p> <p>2 A. And it might be just included with our use</p> <p>3 of force training, and ethical use of force might be</p> <p>4 a section. I'm more than guessing but I don't know</p> <p>5 for sure.</p> <p>6 Q. No, I understand. And just for the record,</p> <p>7 we still have a deposition ahead of us where we're</p> <p>8 going to have Metro designate certain individuals on</p> <p>9 certain training. So my understanding, this is just</p> <p>10 based on your personal knowledge.</p> <p>11 A. Right.</p> <p>12 Q. So going to LVMPD 433. And under number</p> <p>13 14, it says: "A person has a right to use</p> <p>14 self-defense against an officer's excessive force. A</p> <p>15 person has the right to use reasonable force only in</p> <p>16 self-defense against an officer who is using</p> <p>17 excessive force during a lawful arrest."</p> <p>18 Is it your understanding still after</p> <p>19 reading that that based on your own personal</p> <p>20 knowledge, Metro does not train on this?</p> <p>21 A. I'm not aware of any training that we use</p> <p>22 for that that contains that language.</p> <p>23 Q. Okay. All right.</p> <p>24 MR. LAGOMARSINO: I have no further</p> <p>25 questions.</p>	<p style="text-align: right;">Page 81</p> <p>1 had Tashii Farmer survived this event, that he would</p> <p>2 not have faced any criminal charges?</p> <p>3 A. I think I would rather have her answer. If</p> <p>4 that's a hypothetical, I guess I could answer because</p> <p>5 I don't know her exact reasons for saying that.</p> <p>6 Q. Fair enough.</p> <p>7 MR. ANDERSON: Just for the record, it was</p> <p>8 Kevin McMahaill.</p> <p>9 BY MR. MCNUTT:</p> <p>10 Q. My apologies, Kevin McMahaill.</p> <p>11 Does that change your answer?</p> <p>12 A. No, it doesn't.</p> <p>13 Q. Other than from her to him?</p> <p>14 A. No. It doesn't change my answer.</p> <p>15 Q. Is it fair to say that since those are</p> <p>16 crimes, Officer Lopera, had Tashii Farmer survived,</p> <p>17 could have, in fact, charged Tashii Farmer with a</p> <p>18 crime?</p> <p>19 MR. LAGOMARSINO: Form.</p> <p>20 THE WITNESS: That would be up to him to</p> <p>21 articulate. And if he could do that, then yes.</p> <p>22 You named a lot of things, a lot of</p> <p>23 possible crimes, some of which are easier to</p> <p>24 articulate based on what I know of the case than</p> <p>25 others.</p>

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22 (Pages 82 to 85)

<p style="text-align: right;">Page 82</p> <p>1           Certainly -- well, I'll just leave it at</p> <p>2           that.</p> <p>3           BY MR. MCNUTT:</p> <p>4           Q.   In your role -- in your employment with</p> <p>5           Metro, have you reviewed Officer Lopera's CIRT</p> <p>6           statement?</p> <p>7           A.   Yes.</p> <p>8           Q.   And are you aware that Officer Lopera</p> <p>9           stated myriad times through the CIRT statement that</p> <p>10          his impression or belief was that Tashii Farmer was</p> <p>11          under the influence of a controlled substance?</p> <p>12          A.   Yes.</p> <p>13          Q.   So if that was his perspective, would that</p> <p>14          provide reasonable suspicion to detain Tashii Farmer?</p> <p>15          MR. LAGOMARSINO: Form.</p> <p>16          BY MR. MCNUTT:</p> <p>17          Q.   You can answer.</p> <p>18          A.   Yes.</p> <p>19          Q.   And from that point on, are you aware at</p> <p>20          any point since the event to now that Tashii Farmer</p> <p>21          was, in fact, under the influence of illegal</p> <p>22          methamphetamines?</p> <p>23          MR. LAGOMARSINO: Form.</p> <p>24          THE WITNESS: Yes. It was in the</p> <p>25          autopsy.</p>	<p style="text-align: right;">Page 84</p> <p>1           A.   Yes. More likely he would arrest him for</p> <p>2           trespassing if he could get that on, and then wait on</p> <p>3           the blood later on.</p> <p>4           Q.   We'll get to the trespass in a minute.</p> <p>5           A.   Sorry.</p> <p>6           Q.   Are you aware that in Ken Lopera's CIRT</p> <p>7           statement that he testified that he believed that</p> <p>8           Tashii Farmer was going to carjack a vehicle outside</p> <p>9           the Venetian?</p> <p>10          A.   Yes.</p> <p>11          Q.   And irrespective of 20/20 hindsight, is it</p> <p>12          reasonable to accept Ken Lopera's perception of those</p> <p>13          events happening very quickly to justify detaining</p> <p>14          Tashii Farmer at that point?</p> <p>15          MR. LAGOMARSINO: Objection. Form.</p> <p>16          THE WITNESS: Yes. For questioning under</p> <p>17          reasonable suspicion manner, yes.</p> <p>18          BY MR. MCNUTT:</p> <p>19          Q.   What are examples of deescalation</p> <p>20          techniques?</p> <p>21          A.   The first one would be getting more</p> <p>22          resources there. In other words, if you're by</p> <p>23          yourself, getting more officers there. Because</p> <p>24          someone would probably fight with you one on one</p> <p>25          versus you see two or three officers. So we found if</p>
<p style="text-align: right;">Page 83</p> <p>1           BY MR. MCNUTT:</p> <p>2           Q.   So, in fact, Ken Lopera's perception was</p> <p>3           correct, that Tashii Farmer was under the influence</p> <p>4           of a controlled substance, correct?</p> <p>5           A.   Yes.</p> <p>6           Q.   And that would have justified arresting</p> <p>7           Tashii Farmer and taking him to jail; isn't that</p> <p>8           true?</p> <p>9           A.   As long as he could articulate it and get a</p> <p>10          search warrant for his blood for being under the</p> <p>11          influence of a controlled substance, yes.</p> <p>12          So it's not quite as simple as it used to</p> <p>13          be to arrest someone for being under the influence of</p> <p>14          a drug. When I was an officer, I could just arrest</p> <p>15          you and articulate it and that would be it.</p> <p>16          Now you have to get a blood draw, and then</p> <p>17          the DA won't call in the charges until the blood</p> <p>18          comes back.</p> <p>19          So yes, it's all possible. I'm not sure if</p> <p>20          he has the ability to do a telephonic search warrant.</p> <p>21          Not every officer does. It takes some training.</p> <p>22          Q.   But it's true that Tashii Farmer could have</p> <p>23          been detained for that entire period of time in</p> <p>24          handcuffs at least awaiting that search warrant for</p> <p>25          his blood, correct?</p>	<p style="text-align: right;">Page 85</p> <p>1           we get more officers there, that helps to deescalate.</p> <p>2           Talking is deescalation. Backing off from</p> <p>3           using force until you get more officers there is</p> <p>4           another form of deescalation. And deescalation could</p> <p>5           also be using tools so you don't have to use deadly</p> <p>6           force.</p> <p>7           Now, in this case there was no weapons</p> <p>8           involved in Tashii Farmer, but what generally we talk</p> <p>9           about with deescalation is using less lethal tools so</p> <p>10          we don't have to use lethal force. So the Taser, the</p> <p>11          bean bag, 40-millimeter cap stun. All those things</p> <p>12          are deescalation if you're trying to prevent the use</p> <p>13          of lethal force.</p> <p>14          Q.   When an officer broadcasts a Code Red, does</p> <p>15          that indicate to other officers that they should</p> <p>16          respond to that, or is that merely a communications</p> <p>17          technique to open up the channel?</p> <p>18          A.   Well, so there's no yes or no answer to</p> <p>19          that. It's both. It does shut the channel down so</p> <p>20          that everyone knows there's an emergency there. And</p> <p>21          automatically officers would go to that call.</p> <p>22          Q.   Are you aware that Officer Lopera did, in</p> <p>23          fact, call for a Code Red over the radio?</p> <p>24          A.   Yes. And a foot pursuit.</p> <p>25          Q.   So that would constitute one mechanism of</p>

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23 (Pages 86 to 89)

Page 86	Page 88
<p>1 deescalation technique, correct?</p> <p>2 A. Yes.</p> <p>3 Q. He's seeking to have other officers there,</p> <p>4 correct?</p> <p>5 A. He would have to answer that for me. But</p> <p>6 it's certainly a way to clear the channel and let</p> <p>7 people know that there was something going on where</p> <p>8 he needed help.</p> <p>9 Q. Do you recall Officer Lopera giving verbal</p> <p>10 commands to Tashii Farmer?</p> <p>11 A. Yes.</p> <p>12 Q. Do you recall at any point that Tashii</p> <p>13 Farmer complied with those verbal commands?</p> <p>14 A. I didn't see any, that he complied.</p> <p>15 Q. You said in a question, in response to a</p> <p>16 question from Mr. Lagomarsino, that the use of the</p> <p>17 LVNR or neck restraint, whatever the exact question</p> <p>18 was, he asked you if it was excessive in your opinion</p> <p>19 and you said yes.</p> <p>20 Do you recall that?</p> <p>21 A. Yes.</p> <p>22 Q. Why do you think it was excessive?</p> <p>23 A. So his question also included based on the</p> <p>24 length of time that the LVNR or whatever neck</p> <p>25 restraint was applied was on there, and that's what I</p>	<p>1 A. You're right. And for how long it was</p> <p>2 applied.</p> <p>3 Q. And do you know what caused Tashii Farmer</p> <p>4 to go unconscious, i.e., whether it was from the neck</p> <p>5 restraint or whether it was from exhaustion or</p> <p>6 whether it was from the use of illegal narcotics?</p> <p>7 A. No. I don't know.</p> <p>8 Q. Is it possible that Tashii Farmer went</p> <p>9 unconscious because he was under the influence of</p> <p>10 illegal methamphetamine?</p> <p>11 MR. LAGOMARSINO: Form. Foundation.</p> <p>12 THE WITNESS: I would say I don't know</p> <p>13 that. I've never seen anyone go unconscious from</p> <p>14 using meth.</p> <p>15 BY MR. MCNUTT:</p> <p>16 Q. You said that the use of the Taser was</p> <p>17 excessive.</p> <p>18 A. Yes.</p> <p>19 Q. Is that because Officer Lopera used it more</p> <p>20 than three times?</p> <p>21 A. Yes. Outside of policy.</p> <p>22 Q. Right. And so Metro policy -- just correct</p> <p>23 me if I'm wrong. Metro policy is that an officer can</p> <p>24 use an ECD device up to three times, correct?</p> <p>25 A. That's correct.</p>
Page 87	Page 89
<p>1 thought was excessive. On the video it appears like</p> <p>2 after he was unconscious, the LVNR or whatever</p> <p>3 restraint hold, was still on there too long.</p> <p>4 Q. Can you tell from the video how long Ken</p> <p>5 Lopera had pressure applied to Tashii Farmer's neck?</p> <p>6 A. No. You can't tell.</p> <p>7 Q. Can you tell from the video how long -- or</p> <p>8 excuse me, what angle or application the LVNR I, 2,</p> <p>9 or 3 Ken Lopera was attempting to utilize?</p> <p>10 A. You can't tell because they're both moving</p> <p>11 around, and the camera angle doesn't show you that.</p> <p>12 Q. Is it fair to say that at various points</p> <p>13 when Ken's encircling arm is around Tashii Farmer's</p> <p>14 neck that no pressure was applied because you simply</p> <p>15 don't know, correct?</p> <p>16 A. You can't -- you're right. You can't tell</p> <p>17 how much pressure was applied throughout the time.</p> <p>18 Q. So do you think it would be accurate to say</p> <p>19 that a neck restraint or an LVNR or a rear-naked</p> <p>20 choke was applied to Tashii Farmer for the entirety</p> <p>21 of the time that his encircling arm was around Tashii</p> <p>22 Farmer?</p> <p>23 A. Definitely not.</p> <p>24 Q. Because you cannot tell whether any</p> <p>25 pressure was applied, correct?</p>	<p>1 Q. And then at that point they should use some</p> <p>2 other control technique, correct?</p> <p>3 A. They should determine that the use of Taser</p> <p>4 is ineffective and switch to another.</p> <p>5 Q. Isn't it also true that Metro policy allows</p> <p>6 an officer to deviate from that policy if certain</p> <p>7 circumstances exist such as the officer is undersized</p> <p>8 compared to the suspect or the officer is alone?</p> <p>9 A. Deviate from the policy of?</p> <p>10 Q. That you cannot use the ECD more than three</p> <p>11 times?</p> <p>12 A. I would have to review the policy. I can't</p> <p>13 remember if it says that.</p> <p>14 Q. So you testified earlier that you know who</p> <p>15 Sergeant Bland is, and he's been identified --</p> <p>16 A. Yes.</p> <p>17 Q. -- in the estate case as a subject matter</p> <p>18 expert?</p> <p>19 A. Yes.</p> <p>20 Q. He testified to that fact. He testified</p> <p>21 that an officer alone could absolutely use an ECD</p> <p>22 device more than three times if that was the best</p> <p>23 opportunity, especially if the officer was undersized</p> <p>24 compared to the suspect.</p> <p>25 MR. LAGOMARSINO: Objection. Misstates.</p>

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\* \* \* Videotaped Deposition \* \* \*

24 (Pages 90 to 93)

<p style="text-align: right;">Page 90</p> <p>1 BY MR. MCNUTT:</p> <p>2 Q. Do you disagree with his opinion?</p> <p>3 A. No. Here's what I would say. That</p> <p>4 officer, every officer that uses force, has to</p> <p>5 justify the force they use. So if they go outside of</p> <p>6 policy, they have to explain that and that may or may</p> <p>7 not be justified.</p> <p>8 Q. And so had Ken Lopera explained that to</p> <p>9 you, you may have said something different, then</p> <p>10 okay, that use of the ECD device was okay or within</p> <p>11 policy?</p> <p>12 A. Well, I guess it's a little different in</p> <p>13 this case because there was punches, there was Taser</p> <p>14 and there was LVNR. So you can't just take one part</p> <p>15 of that and say that's excessive or this is not</p> <p>16 within policy or that.</p> <p>17 It's a use of force that in that incident</p> <p>18 all is included together.</p> <p>19 So he would have to articulate I did this</p> <p>20 and this wasn't effective, so I moved to this. And</p> <p>21 then this wasn't effective, I went to that. And if</p> <p>22 he did that correctly, even though some of the things</p> <p>23 might be outside of policy, doesn't say how many</p> <p>24 times you can strike someone. Because how many</p> <p>25 strikes you did, you can't really tell. But we all</p>	<p style="text-align: right;">Page 92</p> <p>1 this all being videotaped, it looks terrible.</p> <p>2 And so that to me, I believe CIRT said it</p> <p>3 was excessive. But, you know, to me I'm more</p> <p>4 concerned with the Taser use and the LVNR than I am</p> <p>5 with the strikes because I know some of the strikes</p> <p>6 did not hit him.</p> <p>7 BY MR. MCNUTT:</p> <p>8 Q. Now, let's go back to the chain of command.</p> <p>9 The CIRT, the Critical Incident Review Team, do they</p> <p>10 report to you?</p> <p>11 A. No.</p> <p>12 Q. Who do they report to?</p> <p>13 A. The captain of IOCP, which at the time was</p> <p>14 Kevin McMahill.</p> <p>15 Q. Now, you sat on Officer Lopera's use of</p> <p>16 force board, correct?</p> <p>17 A. Yes.</p> <p>18 Q. Let's go back to the ECD for a minute with</p> <p>19 respect to it can be used three times and then the</p> <p>20 officer should look to some other use of force.</p> <p>21 If you pull the ECD trigger a fourth time,</p> <p>22 but it has no connection and does not complete the</p> <p>23 circuit, so, therefore, transfers no energy to the</p> <p>24 suspect, is that a violation of policy because you</p> <p>25 pulled the trigger on the ECD but it didn't transfer</p>
<p style="text-align: right;">Page 91</p> <p>1 know if you -- if he was to connect with all those</p> <p>2 punches to Tashii Farmer's head that would have been</p> <p>3 excessive.</p> <p>4 But we didn't say that was excessive</p> <p>5 because we couldn't tell how many punches actually</p> <p>6 hit him and what kind of damage or reaction it had to</p> <p>7 change Tashii Farmer's behavior. His behavior didn't</p> <p>8 change.</p> <p>9 Q. So on the strikes, Metro has no opinion as</p> <p>10 to whether those were excessive because of that fact</p> <p>11 that you don't know how many connected?</p> <p>12 A. Well --</p> <p>13 MR. LAGOMARSINO: Objection. Hold on.</p> <p>14 Sorry.</p> <p>15 Objection to the extent you're asking for</p> <p>16 Metro's opinion. It's not a 30(b)(6) witness.</p> <p>17 You can answer.</p> <p>18 THE WITNESS: And I guess my opinion, not</p> <p>19 Metro's opinion, which I'm a little bit -- I mean, I</p> <p>20 know I'm here to testify for that, but I believe that</p> <p>21 when someone is on the ground, we shouldn't be</p> <p>22 striking them at all. That's my opinion because</p> <p>23 you -- it looks worse than it's effective.</p> <p>24 So my problem is more with effectiveness</p> <p>25 than excessive use of force. And especially with</p>	<p style="text-align: right;">Page 93</p> <p>1 any energy?</p> <p>2 A. So here's what I would say. Yes, it's a</p> <p>3 violation of policy, but that doesn't mean that</p> <p>4 person did something wrong.</p> <p>5 So in other words, if you do it more than</p> <p>6 three times, a supervisor has to investigate why did</p> <p>7 you do it more, and was it -- was it actually</p> <p>8 attached, was it effective. And so that's part of</p> <p>9 the investigation the supervisor would do.</p> <p>10 Q. Are you aware of whether or not all of the</p> <p>11 cyclings of the ECD in this case were -- had complete</p> <p>12 circuit closure such that the device could transfer</p> <p>13 energy to Tashii Farmer?</p> <p>14 A. I am not aware of that. I just don't know.</p> <p>15 Q. Okay. If Sergeant Bland is designated as a</p> <p>16 subject matter expert on defensive tactics, neck</p> <p>17 restraint and things of that nature in this case,</p> <p>18 would you defer to his opinion regarding some of</p> <p>19 these questions that I asked you on those topics?</p> <p>20 MR. LAGOMARSINO: Objection. Form.</p> <p>21 THE WITNESS: Yes.</p> <p>22 BY MR. MCNUTT:</p> <p>23 Q. You said earlier that you didn't have an</p> <p>24 opportunity to get this info from Officer Lopera.</p> <p>25 Do you recall that, generally?</p>

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\* \* \* Videotaped Deposition \* \* \*

25 (Pages 94 to 97)

<p style="text-align: right;">Page 94</p> <p>1 A. Yes.</p> <p>2 Q. When Mr. Lagomarsino was questioning you</p> <p>3 about the use of force board, you said it wasn't much</p> <p>4 of a board because Officer Lopera did not show up and</p> <p>5 testify.</p> <p>6 A. Right.</p> <p>7 Q. As per his right, correct?</p> <p>8 A. Well, not per department policy. But</p> <p>9 that's his -- I guess his right.</p> <p>10 Q. It's his option?</p> <p>11 A. Yes.</p> <p>12 Q. There's consequences to that option?</p> <p>13 A. Yes.</p> <p>14 Q. But you have, in fact, received some of</p> <p>15 this information about Officer Lopera's perceptions</p> <p>16 and beliefs and actions and the justification for his</p> <p>17 conduct because you've read his CIRT report, correct?</p> <p>18 A. Yes. You're right.</p> <p>19 Q. Okay. So does that inform you that -- did</p> <p>20 you find his CIRT report to be unavailing, or did you</p> <p>21 want to hear it from him personally as -- what's the</p> <p>22 disjunct there?</p> <p>23 A. Yes. You're right. And that's what I was</p> <p>24 trying to get at. And I did read his statement and</p> <p>25 read the CIRT report. But that did still lead me to</p>	<p style="text-align: right;">Page 96</p> <p>1 THE WITNESS: Well, the statement is to</p> <p>2 find out from the officer why he used force and for</p> <p>3 him to justify it. And part of that is to determine</p> <p>4 what kind of follow-up we as an agency need to do.</p> <p>5 Now, in the majority of cases, officers</p> <p>6 need some sort of training to fix any deficiencies we</p> <p>7 find or any issues in his statements that don't match</p> <p>8 what he should be saying per policy.</p> <p>9 In other words, people who make mistakes</p> <p>10 don't understand our use of force policy. People</p> <p>11 that understand our use of force policy make the</p> <p>12 better decisions and we very rarely see them making</p> <p>13 bad decisions.</p> <p>14 So I would say that based on the decisions</p> <p>15 Officer Lopera made, it would be very difficult for</p> <p>16 him to convince me that he was justified in his</p> <p>17 actions.</p> <p>18 BY MR. MCNUTT:</p> <p>19 Q. So you testified earlier that you believe</p> <p>20 most officers encountering Tashii Farmer, watching</p> <p>21 him flee into what I'll call the back of the house or</p> <p>22 an employee area only of the casino, would pursue</p> <p>23 Tashii Farmer, correct?</p> <p>24 A. Yes.</p> <p>25 Q. And do you think that officers have at that</p>
<p style="text-align: right;">Page 95</p> <p>1 questions I wanted to ask the use of force board.</p> <p>2 Like I could do to Sergeant Crumrine whose answers</p> <p>3 were probably the reasons why he was recommended for</p> <p>4 a non-confirmation.</p> <p>5 So in that board, the answers you give and</p> <p>6 your attitude and the way you answer the questions</p> <p>7 does have a play in your credibility.</p> <p>8 Q. So if Officer Lopera had testified at the</p> <p>9 use of force board, is there a chance in your mind</p> <p>10 that you would have found his actions to be</p> <p>11 justified?</p> <p>12 A. Is there a chance?</p> <p>13 Q. Yes.</p> <p>14 A. I don't think so.</p> <p>15 Q. Why?</p> <p>16 A. Because I thought the CIRT report and his</p> <p>17 answers, he didn't justify his actions.</p> <p>18 Q. Is that the purpose of a CIRT report?</p> <p>19 A. CIRT report, you mean --</p> <p>20 MR. LAGOMARSINO: Sorry, let me interrupt</p> <p>21 you, sir.</p> <p>22 When you say a CIRT report, there's a</p> <p>23 report issued by Metro and the statement. So I just</p> <p>24 want to make sure the record is clear.</p> <p>25 MR. MCNUTT: The statement.</p>	<p style="text-align: right;">Page 97</p> <p>1 point probable cause to detain that suspect?</p> <p>2 A. So reasonable suspicion?</p> <p>3 Q. Yes. I'm sorry.</p> <p>4 A. Yes.</p> <p>5 Q. Okay. Now, at what point did Ken Lopera</p> <p>6 know Tashii Farmer had no weapons on him?</p> <p>7 A. I don't know because I don't think he ever</p> <p>8 got to the point where he patted him down. So I</p> <p>9 don't think he ever knew for sure until after he was</p> <p>10 handcuffed and someone else probably checked him for</p> <p>11 weapons, I believe.</p> <p>12 Q. Right. So inside the casino, we know from</p> <p>13 Ken Lopera's CIRT transcript that he believed that</p> <p>14 Tashii Farmer was under the influence of a controlled</p> <p>15 substance, correct?</p> <p>16 A. I think he said or mentally ill.</p> <p>17 Q. Actually, so he actually said that he was</p> <p>18 under the influence of a controlled substance on</p> <p>19 seven occasions. And he mentioned mentally ill on</p> <p>20 one occasion.</p> <p>21 MR. LAGOMARSINO: Objection. Form.</p> <p>22 THE WITNESS: Okay. I --</p> <p>23 MR. LAGOMARSINO: Misstates.</p> <p>24 THE WITNESS: I remember something about</p> <p>25 mentally ill.</p>



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26 (Pages 98 to 101)

<p style="text-align: right;">Page 98</p> <p>1 BY MR. MCNUTT:</p> <p>2 Q. And so we have -- from his perception, we</p> <p>3 have Tashii Farmer, he believes he's under the</p> <p>4 influence of a controlled substance and he's now fled</p> <p>5 into a restricted area of the casino, correct?</p> <p>6 A. Yes.</p> <p>7 Q. He pursues and you don't have any problem</p> <p>8 with the pursuit, correct?</p> <p>9 A. No.</p> <p>10 Q. And if he would have caught up to him at</p> <p>11 that point and Tashii Farmer would have complied,</p> <p>12 would you have had any problem with Ken Lopera</p> <p>13 putting him in handcuffs?</p> <p>14 A. He would have to articulate why he's</p> <p>15 putting him in handcuffs, but it's certainly enough</p> <p>16 to stop him -- yes. I would prefer that he stopped</p> <p>17 him and tried to pat him down and talked to him.</p> <p>18 Now, if he runs like that, generally we put them in</p> <p>19 handcuffs right away.</p> <p>20 Q. Once they get outside, do you recall</p> <p>21 hearing on the video Ken Lopera giving verbal</p> <p>22 commands to -- asking Tashii Farmer to stop?</p> <p>23 A. Yes.</p> <p>24 Q. And is that a lawful command?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 100</p> <p>1 Q. If the victim didn't feel like he was going</p> <p>2 to be carjacked, why did he say he locked his car</p> <p>3 doors out of fear?</p> <p>4 MR. LAGOMARSINO: Objection. Form. Calls</p> <p>5 for speculation.</p> <p>6 THE WITNESS: I don't know.</p> <p>7 BY MR. MCNUTT:</p> <p>8 Q. That's a quote. And that was a quote given</p> <p>9 to Metro. He told Metro in a recorded interview</p> <p>10 later on, once they tracked down the license plate</p> <p>11 and found him, he said that he locked his doors,</p> <p>12 quote, out of fear, I guess.</p> <p>13 Does that corroborate Ken Lopera's</p> <p>14 perception of what was going on, or does that</p> <p>15 undercut it?</p> <p>16 MR. LAGOMARSINO: Form. Misstates.</p> <p>17 Argumentative. Calls for hearsay.</p> <p>18 THE WITNESS: So to me all it means is he</p> <p>19 was scared of Tashii Farmer. It doesn't articulate</p> <p>20 that Tashii Farmer was going to steal his vehicle.</p> <p>21 So I understand what you're saying that the</p> <p>22 guy was scared of him, and I think Tashii Farmer</p> <p>23 running and acting the way he was probably was scary.</p> <p>24 But that doesn't -- to me, I'm looking for</p> <p>25 probable cause to say carjacking. I'm looking for</p>
<p style="text-align: right;">Page 99</p> <p>1 Q. And did Tashii Farmer comply with that?</p> <p>2 A. No.</p> <p>3 Q. And Ken Lopera articulated in his CIRT</p> <p>4 statement that he believed that Tashii Farmer was</p> <p>5 going to carjack a white Toyota pickup truck outside</p> <p>6 the Venetian.</p> <p>7 Do you recall that?</p> <p>8 A. Yes.</p> <p>9 Q. At that point, that's not a misdemeanor,</p> <p>10 correct? Carjacking an occupied vehicle is a felony,</p> <p>11 correct?</p> <p>12 A. Yes.</p> <p>13 Q. Is Ken Lopera justified in using a Taser at</p> <p>14 that point?</p> <p>15 A. Well, his -- so you're putting me in the</p> <p>16 position to justify his actions, which when I watch</p> <p>17 the video, I don't see an attempted carjacking. Now,</p> <p>18 he sees it differently than me. He was there, I</p> <p>19 wasn't there.</p> <p>20 So and I didn't feel like his answers in</p> <p>21 the CIRT interview articulated a carjacking either.</p> <p>22 Now, I don't know -- I now have hindsight</p> <p>23 to know that the victim didn't feel like he was going</p> <p>24 to be carjacked. So that -- it kind of undermines</p> <p>25 what, you know, what Lopera said.</p>	<p style="text-align: right;">Page 101</p> <p>1 him taking him, moving him out of the way, going into</p> <p>2 the car, taking his keys, using a weapon, threatening</p> <p>3 him. Those are the carjacking cases I'm familiar</p> <p>4 with.</p> <p>5 BY MR. MCNUTT:</p> <p>6 Q. So -- I'm sorry, go ahead.</p> <p>7 A. So I understand what he said. But I don't</p> <p>8 see it when I look at the video. I wasn't there. I</p> <p>9 just don't see it.</p> <p>10 Q. You would agree with me these events</p> <p>11 happened pretty quick, correct?</p> <p>12 A. Yes.</p> <p>13 Q. And is it your opinion that Ken Lopera</p> <p>14 should have waited until Tashii Farmer committed some</p> <p>15 further act against the occupant of the vehicle</p> <p>16 before he took action?</p> <p>17 MR. LAGOMARSINO: Objection. Form.</p> <p>18 Vague.</p> <p>19 BY MR. MCNUTT:</p> <p>20 Q. Meaning at what point should Ken Lopera</p> <p>21 have used that ounce of prevention versus the pound</p> <p>22 of cure?</p> <p>23 MR. LAGOMARSINO: Objection. Form.</p> <p>24 THE WITNESS: It's hard for me to go back</p> <p>25 and say what he should have done.</p>

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27 (Pages 102 to 105)

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<p>1 BY MR. MCNUTT:</p> <p>2 Q. But it's subjective, isn't it?</p> <p>3 A. Yes. I guess that's what I'm trying to</p> <p>4 say, subjective.</p> <p>5 Q. So two reasonable officers could come to a</p> <p>6 different conclusion about how to act in that</p> <p>7 circumstance?</p> <p>8 MR. LAGOMARSINO: Objection. Form.</p> <p>9 THE WITNESS: I guess two reasonable</p> <p>10 officers could disagree on what Tashii Farmer was</p> <p>11 doing.</p> <p>12 BY MR. MCNUTT:</p> <p>13 Q. And based on that disagreement, of course,</p> <p>14 taking different actions towards Tashii Farmer,</p> <p>15 correct?</p> <p>16 MR. LAGOMARSINO: Objection. Form.</p> <p>17 THE WITNESS: Yes, I mean, like I said, we</p> <p>18 rely on officers to justify their use of force. And</p> <p>19 if it's not justified, then it's wrong.</p> <p>20 BY MR. MCNUTT:</p> <p>21 Q. In this case it wasn't justified because</p> <p>22 Ken Lopera did not testify at the use of force board?</p> <p>23 MR. LAGOMARSINO: Objection. Form.</p> <p>24 THE WITNESS: That's only part of it. He</p> <p>25 did give a CIRT statement, and he did say that he</p>	<p>1 site is tactics decision-making. And so sometimes in</p> <p>2 that disposition, there is some bleed-over.</p> <p>3 In other words, did the tactics employed,</p> <p>4 because they were so bad, cause the use of force?</p> <p>5 Now, in this case, this wasn't -- that</p> <p>6 wasn't an option so we didn't have to consider that.</p> <p>7 But there was no one else we were looking</p> <p>8 at during the use of force board other than Lopera.</p> <p>9 Because he's the one that used force. The other</p> <p>10 officers and all the other statements are using the</p> <p>11 tactical review board side.</p> <p>12 So although it's one case, they are</p> <p>13 separate.</p> <p>14 Q. Okay. Now, at the time of this event, May</p> <p>15 of 2017, the LVNR was authorized to be used in a low</p> <p>16 level of force situation, correct?</p> <p>17 A. Yes.</p> <p>18 Q. So the LVNR was a tool that Ken Lopera</p> <p>19 could have used in this circumstance, correct?</p> <p>20 A. Yes.</p> <p>21 Q. And shortly thereafter, there was a policy</p> <p>22 change to where it was only allowed to be used in</p> <p>23 intermediate levels or higher, correct?</p> <p>24 A. You're correct.</p> <p>25 Q. And Mr. Lagomarsino got into that a little</p>
Page 103	Page 105
<p>1 thought the subject was trying to carjack whatever</p> <p>2 his name was.</p> <p>3 BY MR. MCNUTT:</p> <p>4 Q. Did the use --</p> <p>5 A. When we looked at it, we just didn't see</p> <p>6 that part, and I didn't see it when I watched the</p> <p>7 video or read it.</p> <p>8 Q. Okay. Did the use of force board consider</p> <p>9 the CIRT statement?</p> <p>10 A. Yes.</p> <p>11 Q. Why?</p> <p>12 A. Well, we consider the whole case.</p> <p>13 Q. Okay. So the CIRT statement --</p> <p>14 A. You couldn't do the case against everyone</p> <p>15 else without considering Lopera's statement and what</p> <p>16 he did.</p> <p>17 Q. Okay. And the reason I ask -- it's not a</p> <p>18 trick question. I think I didn't understand</p> <p>19 something.</p> <p>20 I thought the CIRT statement stayed purely</p> <p>21 on the policy side, and it seems the use of force</p> <p>22 board is -- I guess maybe it's more on the policy</p> <p>23 side, but it is also on the policy side?</p> <p>24 A. Right. So you're getting into a little</p> <p>25 area that one of the dispositions on the use of force</p>	<p>1 bit earlier. In a nutshell, why was that?</p> <p>2 A. In a nutshell, we didn't want officers to</p> <p>3 go to LVNR and low level usage. And then secondly,</p> <p>4 we wanted to simplify the policy to ensure that</p> <p>5 everyone understood when they could and couldn't use</p> <p>6 the LVNR.</p> <p>7 Q. And when you say simplify the policy,</p> <p>8 exactly what has been simplified?</p> <p>9 A. Well, when you have a technique that can be</p> <p>10 used over low level, intermediate and deadly force,</p> <p>11 then it was too broad for that technique.</p> <p>12 Q. So give me an example of low level versus</p> <p>13 intermediate force.</p> <p>14 A. Low level is verbal resistance. Not</p> <p>15 following commands.</p> <p>16 Q. So previously, prior to 2017, you could use</p> <p>17 LVNR for things like -- for misdemeanors, correct?</p> <p>18 A. Yes.</p> <p>19 Q. Such as selling water?</p> <p>20 A. Yes.</p> <p>21 Q. And just recently in the example that you</p> <p>22 testified about a little bit earlier where the</p> <p>23 officer was showing -- was employing -- we'll mark</p> <p>24 that exhibit...</p> <p>25 (Exhibit A was marked for</p>



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## \* \* \* Videotaped Deposition \* \* \*

28 (Pages 106 to 109)

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<p>1 identification.)</p> <p>2 BY MR. MCNUTT:</p> <p>3 Q. Take a minute and look at that article.</p> <p>4 Have you seen that screenshot before?</p> <p>5 A. Have I seen it before?</p> <p>6 Q. Today.</p> <p>7 A. Monday? Yes.</p> <p>8 Q. And so this is an article -- we printed</p> <p>9 this off yesterday from the Las Vegas Review-Journal.</p> <p>10 And what's interesting to me is that Metro, in their</p> <p>11 statement, the LVMPD PIO -- do you see at the bottom</p> <p>12 of the first page? What is PIO?</p> <p>13 A. Public information officer.</p> <p>14 Q. "The LVMPD PIO has received a number of</p> <p>15 requests reference a video circulating on social</p> <p>16 media of a water seller being taken into custody,</p> <p>17 said a statement released Monday by Metro."</p> <p>18 And then quote, "The video is from an</p> <p>19 incident in July 2013 which was fully investigated by</p> <p>20 LVMPD Internal Affairs. The investigation showed no</p> <p>21 policy violations occurred. In addition, a lawsuit</p> <p>22 filed by the individual in the video was dismissed by</p> <p>23 the courts."</p> <p>24 And that comports with your testimony</p> <p>25 earlier, correct?</p>	<p>1 or may not be excessive but certainly all of the</p> <p>2 techniques used to me were combined to make it</p> <p>3 excessive use of force.</p> <p>4 Q. So if Tashii Farmer had, as Ken Lopera</p> <p>5 hoped for, prone out -- that's what he said in his</p> <p>6 CIRT statement -- that after he achieved</p> <p>7 neuromuscular incapacitation with the first Taser</p> <p>8 strike, he expected Tashii Farmer to prone out and he</p> <p>9 was going to wait for his captain to show up is what</p> <p>10 he said.</p> <p>11 Do you recall that?</p> <p>12 A. I don't remember the part about the</p> <p>13 captain. But I do remember saying he was hoping the</p> <p>14 Taser would work and he would be prone out and that</p> <p>15 would be the end of it.</p> <p>16 Q. Had that occurred, had Tashii Farmer</p> <p>17 complied with his commands to not move after he had</p> <p>18 been tased, what would have happened at that point,</p> <p>19 do you have any idea?</p> <p>20 A. No. I mean, Officer Lopera would have</p> <p>21 completed an arrest report, use of force</p> <p>22 documentation. That would have been reviewed by a</p> <p>23 supervisor. And I assume if that's all that</p> <p>24 happened, that that would be fine.</p> <p>25 Q. And Officer Lopera would not have been</p>
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<p>1 A. Good.</p> <p>2 Q. And then Metro says, in the statement,</p> <p>3 quote, "Please note per Clark County code 6.04.130 it</p> <p>4 is illegal to sell any merchandise, goods, items,</p> <p>5 wares or services on any portion of public</p> <p>6 right-of-way."</p> <p>7 A. Right.</p> <p>8 Q. Did you read that or do you just take my</p> <p>9 word for it that I read it accurately?</p> <p>10 A. I read it quickly.</p> <p>11 Q. So per Metro policy, it's okay to employ</p> <p>12 the LVNR, lateral vascular neck restraint, on</p> <p>13 somebody allegedly committing the misdemeanor crime</p> <p>14 of selling water in the desert, and but yet Metro on</p> <p>15 the other hand has held that someone that is believed</p> <p>16 to be under the influence of a controlled substance</p> <p>17 and, in fact, was under the influence of a controlled</p> <p>18 substance, fled irrationally into an employee area</p> <p>19 only, and was believed to be carjacking someone, that</p> <p>20 that use of force with the LVNR was excessive?</p> <p>21 MR. LAGOMARSINO: Objection. Form.</p> <p>22 BY MR. MCNUTT:</p> <p>23 Q. Is that the position?</p> <p>24 A. The position I've had and I've tried to</p> <p>25 make it clear is the individual techniques used may</p>	<p>1 penalized in any way by Metro?</p> <p>2 A. Right.</p> <p>3 Q. But Tashii Farmer didn't comply and didn't</p> <p>4 stay prone on the ground, correct?</p> <p>5 MR. LAGOMARSINO: Form.</p> <p>6 THE WITNESS: Correct.</p> <p>7 BY MR. MCNUTT:</p> <p>8 Q. And so additional uses of force were</p> <p>9 warranted, correct?</p> <p>10 A. Yes.</p> <p>11 Q. Because when a suspect doesn't comply with</p> <p>12 lawful commands and some force has already been used,</p> <p>13 additional force is warranted, correct?</p> <p>14 MR. LAGOMARSINO: Form.</p> <p>15 THE WITNESS: Yes. And different</p> <p>16 techniques.</p> <p>17 BY MR. MCNUTT:</p> <p>18 Q. And different techniques.</p> <p>19 Officer Lif said after one or two Taser</p> <p>20 strikes, she would have went hands on with Tashii</p> <p>21 Farmer. Is that a reasonable alternative?</p> <p>22 A. Yes.</p> <p>23 Q. She also said she would have used her baton</p> <p>24 on Tashii Farmer. Is that a reasonable alternative?</p> <p>25 A. Yeah. That's another tool.</p>

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29 (Pages 110 to 113)

<p style="text-align: right;">Page 110</p> <p>1 Q. Does that video well?</p> <p>2 A. No. None of those really video well.</p> <p>3 Q. So if Officer Lif had been there, the video</p> <p>4 would have been of a six-foot woman swinging a steel</p> <p>5 baton at Tashii Farmer, correct?</p> <p>6 A. Yes.</p> <p>7 Q. And Tashii Farmer is about six foot so</p> <p>8 they're about even height.</p> <p>9 A. Okay.</p> <p>10 Q. So that doesn't look good either, right?</p> <p>11 A. Most use of force don't look good on video.</p> <p>12 Q. That's true. Because in this case, when</p> <p>13 you're dealing with a criminal committing criminal</p> <p>14 acts, it's difficult to control him, isn't it?</p> <p>15 MR. LAGOMARSINO: Objection. Form. Move</p> <p>16 to strike.</p> <p>17 THE WITNESS: That's part of it. But the</p> <p>18 other part is you don't see what happened before.</p> <p>19 You don't usually hear the audio. So there's more</p> <p>20 things that go into it than that.</p> <p>21 So just a clip like this, for example,</p> <p>22 doesn't look very good. Although this is a properly</p> <p>23 applied LVNR to someone who was not cooperating and</p> <p>24 committed a crime.</p> <p>25 But that's why we had to put a statement</p>	<p style="text-align: right;">Page 112</p> <p>1 A. I'm a little confused. Are you saying if</p> <p>2 they don't comply with your first verbal order?</p> <p>3 Q. Yes. For example, if you tell somebody to</p> <p>4 stay on the ground and they immediately sit up, you</p> <p>5 can then either give them another verbal command or</p> <p>6 use some other control technique, correct? Meaning</p> <p>7 you don't have to continue to give them leeway to,</p> <p>8 well, maybe he was going to sit up and then lay back</p> <p>9 down, correct?</p> <p>10 A. Yeah. Normally we would give multiple</p> <p>11 verbal commands, and then I would prefer that people</p> <p>12 would then say, okay, I got an uncooperative subject,</p> <p>13 whatever.</p> <p>14 You want to do something to get more people</p> <p>15 there at that point before it gets into a fight.</p> <p>16 Q. Understood. And isn't it true that Officer</p> <p>17 Lopera thought his partner was going to be right</p> <p>18 behind him, correct?</p> <p>19 A. He thought that.</p> <p>20 Q. Unfortunately, he was wrong.</p> <p>21 A. Right.</p> <p>22 Q. And no one knows why, correct?</p> <p>23 MR. LAGOMARSINO: Objection. Form.</p> <p>24 THE WITNESS: Well, I guess part of the</p> <p>25 reason why is he didn't tell Officer Lif what he was</p>
<p style="text-align: right;">Page 111</p> <p>1 out.</p> <p>2 BY MR. MCNUTT:</p> <p>3 Q. Right. And because policing is a difficult</p> <p>4 job, correct?</p> <p>5 A. Yes.</p> <p>6 (Exhibit B was marked for</p> <p>7 identification.)</p> <p>8 BY MR. MCNUTT:</p> <p>9 Q. Take a minute and review Exhibit B. Let me</p> <p>10 know if you've seen this document before.</p> <p>11 A. I have. But it's been a while.</p> <p>12 Q. And you recognize this as the arrest report</p> <p>13 of Ken Lopera, correct?</p> <p>14 A. Yes.</p> <p>15 Q. When an officer issues a verbal command,</p> <p>16 how long does he have to wait to determine whether</p> <p>17 the suspect is going to comply with that command?</p> <p>18 A. There is no set time.</p> <p>19 Q. Situational dependent, correct?</p> <p>20 A. Yes.</p> <p>21 Q. If you give someone a lawful command and</p> <p>22 they immediately don't comply with that, then you can</p> <p>23 immediately do something else, correct? Meaning you</p> <p>24 don't have to wait five or six or seven seconds,</p> <p>25 correct?</p>	<p style="text-align: right;">Page 113</p> <p>1 doing.</p> <p>2 BY MR. MCNUTT:</p> <p>3 Q. Officer Lif was at his elbow during the</p> <p>4 initial contact, correct?</p> <p>5 A. She did not know why he took off or what</p> <p>6 was going on. So to me, I would have preferred that</p> <p>7 he make sure that she knew where he was going and</p> <p>8 what he was doing.</p> <p>9 But part of the issue was no communication</p> <p>10 between those two. He assumed that she was coming.</p> <p>11 Q. What should she have done?</p> <p>12 A. What should she have done?</p> <p>13 Q. Yes. Let's take it as you say. Ken</p> <p>14 Lopera, there was miscommunication, no communication,</p> <p>15 whatever.</p> <p>16 If your partner pursues a suspect down an</p> <p>17 employee-only area of a casino, what should you do as</p> <p>18 the partner?</p> <p>19 A. Go with him.</p> <p>20 Q. And that didn't happen.</p> <p>21 A. No.</p> <p>22 Q. And do you know why?</p> <p>23 A. No, I don't know why.</p> <p>24 Q. If you tell someone to stay on the ground,</p> <p>25 lie flat on the ground, and you give them five or six</p>

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30 (Pages 114 to 117)

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1 seconds to comply, is that long enough to determine  
 2 whether or not they're going to comply?  
 3 A. I think that's actually longer than I would  
 4 wait before I would start giving more or different  
 5 verbal commands. You're just giving commands until  
 6 it's clear that -- in other words, until that person  
 7 stood up, if they're just going from laying to  
 8 sitting up, I'm not as concerned if they go from  
 9 laying to sitting up because someone sitting up is  
 10 not a danger to me.  
 11 Q. Of course it depends how quickly they're  
 12 doing it because you don't know how quickly --  
 13 A. You're right.  
 14 Q. -- the movement between --  
 15 A. Yes. It can happen quickly, but I'm just  
 16 trying to go with your scenario. And, you know,  
 17 there's no set time or, you know, number of seconds.  
 18 Every situation is different.  
 19 Q. Let's look at page 7 of 8 or P002374,  
 20 whichever one you prefer to look at.  
 21 And I'm going to start with the second  
 22 paragraph from the bottom that starts: "After  
 23 cycling the ECD seven times."  
 24 Do you see that, sir?  
 25 A. Yes.

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1 Q. So it says: "Officer Lopera holstered his  
 2 ECD with Farmer lying on his stomach. Officer Lopera  
 3 straddled Farmer's back and struck him approximately  
 4 10 to 12 times in the head while giving Farmer verbal  
 5 commands."  
 6 Do you see that?  
 7 A. Yes.  
 8 Q. So it says that Lopera struck Farmer 10 to  
 9 12 times in the head, correct?  
 10 A. Yes.  
 11 Q. And you testified today that it's unclear  
 12 whether any -- how many of the punches connected with  
 13 Tashii Farmer, correct?  
 14 A. Yes.  
 15 Q. So do you think that should be worded a  
 16 little more carefully to make clear to the reader  
 17 that's unclear how many punches struck Tashii Farmer?  
 18 A. Yes.  
 19 Q. So if you go to the fourth paragraph up,  
 20 that starts: "Officer Lopera began issuing verbal  
 21 commands."  
 22 Do you see that?  
 23 A. Yes.  
 24 Q. "Officer Lopera began issuing verbal  
 25 commands to Farmer. However, the longest time

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1 between cycles of the ECD was six seconds. Officer  
 2 Lopera told Farmer to get on his stomach but never  
 3 gave Farmer a reasonable opportunity to comply with  
 4 commands."  
 5 Do you see that?  
 6 A. Yes.  
 7 Q. Now, do you agree with that statement that  
 8 six seconds is not enough time for Tashii Farmer to  
 9 comply?  
 10 A. Well, like I said before, every situation  
 11 is different. And he was not complying. However, he  
 12 was not actively resisting or aggressively resisting,  
 13 I guess is my point.  
 14 And people who are either drunk or under  
 15 the influence of narcotics do not immediately comply,  
 16 rarely do they comply at all.  
 17 Q. Okay. But that's a little -- I appreciate  
 18 that answer. But that's a little different than my  
 19 question.  
 20 A. Okay. Sorry.  
 21 Q. You've testified a couple of times now that  
 22 five or six seconds, in one answer, you said would be  
 23 longer than you would give somebody to comply. And  
 24 I'm simply asking you whether you agree with this  
 25 statement that Lopera giving Farmer six seconds was

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1 not a quote, "Reasonable opportunity to comply with  
 2 commands."  
 3 Do you agree with that statement?  
 4 MR. LAGOMARSINO: Objection. Asked and  
 5 answered.  
 6 THE WITNESS: So there's no way to answer  
 7 that without watching the video.  
 8 BY MR. MCNUTT:  
 9 Q. We're going to.  
 10 A. Because giving someone -- I never timed --  
 11 I just watched the video. I didn't count the number  
 12 of seconds in between. And when you watch the video,  
 13 and he -- you have to give clear direction of what  
 14 you want. And it appeared like -- and I'm going off  
 15 some memory here, but there was some conflicting  
 16 directions given while you're tasing someone, and  
 17 which led to the confusion of him not complying.  
 18 So it's really hard to justify now.  
 19 Q. Do you know who wrote this arrest report?  
 20 A. Yeah. I'm sure it was either Alsop -- I  
 21 think it was Alsop.  
 22 Q. It was Detective Alsop. He testified that  
 23 he wrote every word of it.  
 24 A. Yeah.  
 25 Q. And even though Mr. Colon, or I think it's

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31 (Pages 118 to 121)

<p style="text-align: right;">Page 118</p> <p>1 Mark Colon is on here, he testified that Alsup --</p> <p>2 A. He's a lead detective.</p> <p>3 Q. Right. And you said he's a good detective</p> <p>4 and does good work, correct?</p> <p>5 A. Yes.</p> <p>6 Q. Now, do you think that this at a minimum</p> <p>7 should have been reworded to be a little more</p> <p>8 accurate that six seconds could, in fact, be enough</p> <p>9 time to gain compliance or shouldn't be enough time</p> <p>10 to gain compliance?</p> <p>11 MR. LAGOMARSINO: Objection. Form.</p> <p>12 THE WITNESS: Yes.</p> <p>13 BY MR. MCNUTT:</p> <p>14 Q. So it could have been written a little</p> <p>15 better, correct?</p> <p>16 A. Yes.</p> <p>17 Q. Because in your opinion, six seconds,</p> <p>18 situation dependent, is more than enough time for</p> <p>19 compliance, correct?</p> <p>20 MR. LAGOMARSINO: Misstates.</p> <p>21 BY MR. MCNUTT:</p> <p>22 Q. Yes or no?</p> <p>23 A. Yes.</p> <p>24 Q. So let's go to the fifth paragraph up. And</p> <p>25 this is where we're getting into the carjacking. And</p>	<p style="text-align: right;">Page 120</p> <p>1 A. Yes.</p> <p>2 Q. Should that other quote from Jonathan</p> <p>3 Pierce have been included in this arrest report?</p> <p>4 A. Yes.</p> <p>5 Q. Why was it not?</p> <p>6 A. I don't know.</p> <p>7 Q. So knowing now, if you were the supervisor</p> <p>8 of Detective Alsup and we're sitting here going</p> <p>9 through this, would you kick this arrest report back</p> <p>10 to him and make him correct those three errors we've</p> <p>11 gone over?</p> <p>12 MR. LAGOMARSINO: Objection to the extent</p> <p>13 he caught the errors.</p> <p>14 THE WITNESS: If I knew about the errors,</p> <p>15 then they would be sent back for correction.</p> <p>16 BY MR. MCNUTT:</p> <p>17 Q. Of course.</p> <p>18 A. Normally that would be the sergeant's job</p> <p>19 or the lieutenant's job before it got to anywhere</p> <p>20 else.</p> <p>21 So yes, that's a review that supervisors</p> <p>22 should be doing of these reports.</p> <p>23 Q. And either that didn't happen or it was</p> <p>24 missed, correct?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 119</p> <p>1 the middle of the paragraph there's a statement that</p> <p>2 says -- or a sentence that says: "The driver of the</p> <p>3 white truck stated he did not believe Farmer was a</p> <p>4 threat."</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. Now, the driver in the same interview, the</p> <p>8 driver of the white truck, Jonathan Pierce, told</p> <p>9 Metro officers, members of the FIT team, that he</p> <p>10 locked his doors out of fear of Tashii Farmer.</p> <p>11 MR. LAGOMARSINO: Objection. Misstates.</p> <p>12 BY MR. MCNUTT:</p> <p>13 Q. We talked about that earlier, correct?</p> <p>14 A. Yes.</p> <p>15 Q. I mean, is that not probative information</p> <p>16 regarding what was going on at that moment?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And so the reader of this report</p> <p>19 could get two different opinions about what was going</p> <p>20 on if they only read that the driver of the white</p> <p>21 truck stated he did not believe Farmer was a threat,</p> <p>22 period. Versus the driver of the white truck stated</p> <p>23 he did not believe Farmer was a threat, comma, but he</p> <p>24 locked his doors out of fear.</p> <p>25 Two different interpretations, correct?</p>	<p style="text-align: right;">Page 121</p> <p>1 Q. It starts with Detective Alsup inasmuch as</p> <p>2 he missed getting this completely accurate, correct?</p> <p>3 MR. LAGOMARSINO: Objection. Form.</p> <p>4 THE WITNESS: Yes.</p> <p>5 BY MR. MCNUTT:</p> <p>6 Q. Because he testified that he had access to</p> <p>7 all of his team's information, which included</p> <p>8 Jonathan Pierce's statement about locking his doors</p> <p>9 out of fear.</p> <p>10 Now, Mr. Lagomarsino asked you earlier a</p> <p>11 few questions about body-worn camera policy. And if</p> <p>12 I recall your testimony correctly, you said that the</p> <p>13 officers involved in the use of force needed to have</p> <p>14 their -- per policy had to have their cameras</p> <p>15 running. They couldn't turn them off until the use</p> <p>16 of force was over; is that accurate?</p> <p>17 A. Yes.</p> <p>18 Q. And so in this case, would an acceptable</p> <p>19 time to turn the cameras off been when Tashii Farmer</p> <p>20 was in handcuffs, or is it before that or is it after</p> <p>21 that?</p> <p>22 A. Usually when the subject is placed in</p> <p>23 handcuffs is what we would consider the end of that</p> <p>24 use of force incident.</p> <p>25 Q. Okay. And obviously we have plenty of</p>

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32 (Pages 122 to 125)

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<p>1 body-worn cam footage video that goes well after 2 Tashii Farmer was placed in handcuffs, correct? 3 A. Yes. 4 Q. Is there a policy or protocol for Metro 5 officers that somebody says -- you know, broadcasts a 6 radio command or something, all clear, suspect has 7 been detained, everybody can turn off their body-worn 8 cams? Meaning is it formalized like that or are 9 officers allowed to do it on their own? 10 A. It's not formalized whereas something would 11 come over the radio to turn off your body cameras. 12 However, when an officer is involved in a 13 critical incident, use of force that's deadly, a 14 supervisor should isolate them and have them turn off 15 their body camera. And that's one of the things that 16 Sergeant Crumrine did not do for Officer Lopera. 17 Q. So at this point, you've said that when 18 Tashii Farmer was in handcuffs, it would have been -- 19 now, I'm asking a question. It's acceptable or would 20 have been acceptable for everyone's body-worn cam to 21 have been turned off at that point or just Officer 22 Lopera's? 23 A. I would say Officer Lopera, because we do 24 want to capture -- if this was a normal use of force 25 and he was handcuffed and there was no injuries, it</p>	<p>1 Q. Now, do you put much stock in the fact that 2 after this foot pursuit and this fight, and with his 3 adrenaline running and everything else, that Ken 4 Lopera did not say when asked immediately following 5 this that he, quote, used the lateral vascular neck 6 restraint, which I'll admit does not exactly flow off 7 the tongue. 8 Did you put much stock in what he said 9 versus what he did on the tape? 10 A. So the only issue I had with what he said 11 was that choke is not what we train. Now, from a 12 training point of view, I need for officers to use 13 training the way we train them. 14 So that's my concern with that. Not the 15 difference between an LVNR and a rear-naked choke. 16 You don't train people on the rear-naked choke. 17 Q. Correct. Although both are -- are you 18 aware that both are a blood choke and not an air 19 choke? Meaning both the rear-naked choke -- let me 20 put it this way. The LVNR and the rear-naked choke 21 are both neck restraints that seek to -- 22 A. Yes. 23 Q. -- control the blood flow not the airflow? 24 A. Yes. 25 Q. Do you know why Metro made the</p>
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<p>1 would be fine. But since there was a medical issue 2 and then some other things happened with trying to 3 render aid, we wouldn't want to capture that on body 4 camera. So it's not, okay, handcuffs are on, all 5 body cameras are off. 6 What we are concerned about is the officer 7 who has been in a foot pursuit and a fight and his 8 adrenaline is pumping that his camera is off so he 9 doesn't talk too much. 10 Q. And in this case, maybe there was too much 11 talk? 12 A. There was. And that's one of the reasons 13 why we isolate people and put them in a car by 14 themselves until they get to talk to a 15 representative. 16 Q. So in this case, Ken Lopera is heard on 17 tape saying, as he said in his CIRT statement, using 18 shorthand layman's terms, I forget exactly how he 19 said it but I can pull it up here, that he rear-naked 20 Tashii Farmer. And much was made that Ken Lopera did 21 not use the proper approved lateral vascular neck 22 restraint. 23 Are you aware of that disjunct in this 24 case? 25 A. Yes.</p>	<p>1 determination in this arrest report that Ken Lopera 2 did not use an LVNR and they thought that he did use 3 a rear-naked choke? Do you know why? 4 A. I don't know why. 5 Q. Okay. Do you have an opinion as to whether 6 it was an LVNR versus something else? 7 A. Do I have an opinion of why that's in the 8 report? 9 Q. No. As to whether or not -- strike that. 10 Let me ask a better question. Do you have 11 an opinion as to whether Ken Lopera used a neck 12 restraint other than the lateral vascular neck 13 restraint, or if he merely did not properly apply the 14 lateral vascular neck restraint? 15 A. So I can't tell. Your question is valid, 16 and that's what we looked at was what happened? And 17 did he not apply the LVNR correctly. Did he use a 18 different technique? Did he not do anything that we 19 taught him? 20 And it looks like he tried to apply the 21 LVNR. The subject was moving around. He moved to a 22 different chokehold. But you can't tell that off the 23 video. There's not enough video to show the arm 24 angle and the heads and all that. 25 Q. Not as nice as --</p>



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 \* \* \* Videotaped Deposition \* \* \*

33 (Pages 126 to 129)

<p style="text-align: right;">Page 126</p> <p>1 A. No.</p> <p>2 Q. -- the exhibit we looked at earlier where</p> <p>3 it's a direct front-on, correct?</p> <p>4 A. Right.</p> <p>5 Q. So Ken Lopera in his CIRT statement said:</p> <p>6 "While I had the LVNR applied, I was attempting to,</p> <p>7 due to the fact that he was on his side, his</p> <p>8 movement, I had full encirclement but I wasn't able</p> <p>9 to get the full grip. I was still trying to embrace</p> <p>10 that neck brace principle."</p> <p>11 Do you know what the neck brace principle</p> <p>12 is?</p> <p>13 A. That's you're head to head.</p> <p>14 Q. It's where you're controlling the suspect's</p> <p>15 neck to protect their airway?</p> <p>16 A. Okay.</p> <p>17 Q. I mean, that's a phrase out of Metro's</p> <p>18 training: "While applying pressure to his carotid</p> <p>19 artery."</p> <p>20 Sounds like an LVNR, correct?</p> <p>21 A. Yes.</p> <p>22 Q. "Due to the way my body was positioned to</p> <p>23 my right side," and then another sentence, "I did not</p> <p>24 have that luxury due to him already being on my</p> <p>25 back."</p>	<p style="text-align: right;">Page 128</p> <p>1 test, but do you know the different levels of</p> <p>2 resistance that Metro teaches that suspects undergo</p> <p>3 or utilize? We have compliant.</p> <p>4 A. Compliant.</p> <p>5 Q. Passive resistance.</p> <p>6 A. Passive and active resistant, aggressive --</p> <p>7 Q. Resistance, and aggravated aggressive</p> <p>8 resistance.</p> <p>9 A. Yeah.</p> <p>10 Q. Do you have an opinion as to -- and if you</p> <p>11 don't, that's fine -- what Tashii Farmer was</p> <p>12 demonstrating in this incident?</p> <p>13 A. I thought it was active resistance. It</p> <p>14 looked to me like he didn't want to be handcuffed.</p> <p>15 Q. And I'll read active resistance, and this</p> <p>16 is from LVMPD 0007: "The subject's verbal or</p> <p>17 physical actions are intended to prevent an officer</p> <p>18 from placing the suspect in custody and taking</p> <p>19 control, but are not directed at harming the officer.</p> <p>20 Examples, walking or running away, breaking the</p> <p>21 officer's grip."</p> <p>22 Does that comport with your memory?</p> <p>23 A. Yes.</p> <p>24 Q. And then aggressive resistance so we know</p> <p>25 what the distinction is: "The subject displays the</p>
<p style="text-align: right;">Page 127</p> <p>1 So he articulates that he couldn't apply</p> <p>2 the LVNR properly. And yet Detective Alsop found</p> <p>3 that he absolutely did not use an LVNR.</p> <p>4 Do you think that's accurate?</p> <p>5 A. Well, Detective Alsop didn't have his</p> <p>6 statement.</p> <p>7 Q. But do you think -- that's a fair point.</p> <p>8 And because we've used -- talked about the statement</p> <p>9 on both sides, and I'm glad to hear you say that</p> <p>10 actually. It affirms somewhat my belief in the</p> <p>11 system.</p> <p>12 So do you think anybody watching the video</p> <p>13 could definitively tell that Ken Lopera was not</p> <p>14 applying the LVNR accurately or was intentionally</p> <p>15 using a non-approved technique?</p> <p>16 A. You couldn't tell and our experts couldn't</p> <p>17 tell either.</p> <p>18 Q. So do you think it's fair for</p> <p>19 Detective Alsop to come to that definitive</p> <p>20 conclusion?</p> <p>21 A. I think it's a little too definitive. But</p> <p>22 it's not wrong 100 percent. I don't know how to --</p> <p>23 he could have worded it better.</p> <p>24 Q. You talked about levels of resistance just</p> <p>25 in passing in one of your answers. This is not a</p>	<p style="text-align: right;">Page 129</p> <p>1 intent to harm the officer, themselves or another</p> <p>2 person" -- let me know if I'm going too fast -- "and</p> <p>3 prevent an officer from placing the subject in</p> <p>4 custody and taking control. The aggression may</p> <p>5 manifest itself through a subject taking a fighting</p> <p>6 stance, punching, kicking, striking, attacks with</p> <p>7 weapons or other actions which present an imminent</p> <p>8 threat of physical harm to the officer or another."</p> <p>9 Comport with your --</p> <p>10 A. Yes.</p> <p>11 Q. And then obviously aggravated aggressive is</p> <p>12 actions significant resulting in death or serious</p> <p>13 bodily harm.</p> <p>14 If I reach for your sidearm or if you're</p> <p>15 carrying one on the other side, your Taser, is</p> <p>16 that -- what level of resistance is that?</p> <p>17 A. That's aggravated -- not aggravated.</p> <p>18 Q. Is it aggressive resistance?</p> <p>19 A. Aggressive resistance, I'm sorry.</p> <p>20 Q. So your choices are active or aggressive</p> <p>21 resistance?</p> <p>22 A. Yes.</p> <p>23 Q. Yes? I said your choices are active</p> <p>24 resistance or aggressive resistance.</p> <p>25 A. It depends how you articulated that I</p>

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 \* \* \* Videotaped Deposition \* \* \*

34 (Pages 130 to 133)

<p style="text-align: right;">Page 130</p> <p>1 reached for your Taser or your gun.</p> <p>2 Q. I tried to grab your Taser off your belt.</p> <p>3 A. So you get your hands on my Taser?</p> <p>4 Q. Sure.</p> <p>5 A. That's -- that's aggravated aggressive,</p> <p>6 whatever it is.</p> <p>7 Q. I have a list. Let's do this.</p> <p>8 A. I don't have that. So it's more than</p> <p>9 active aggressive.</p> <p>10 (Exhibit C was marked for</p> <p>11 identification.)</p> <p>12 THE WITNESS: It's more than active</p> <p>13 resistance. It's aggressive resistance.</p> <p>14 BY MR. MCNUTT:</p> <p>15 Q. And that's fine. I should have given you</p> <p>16 that earlier. I wasn't try to trick you. Just</p> <p>17 trying to speed the process.</p> <p>18 So if a suspect grabs at an officer's</p> <p>19 weapon or any of the weapons on his belt, that would</p> <p>20 be aggressive resistance, correct?</p> <p>21 A. Yes.</p> <p>22 Q. If an officer punched, struck or kicked --</p> <p>23 the suspect punched, struck or kicked the officer,</p> <p>24 that would be aggressive resistance --</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 132</p> <p>1 about their business."</p> <p>2 A. Yes.</p> <p>3 Q. Was Ken Lopera's interaction with Tashii</p> <p>4 Farmer a consensual encounter to begin with?</p> <p>5 A. Yes.</p> <p>6 Q. Did it remain a consensual encounter once</p> <p>7 Tashii Farmer fled into the employee-area only?</p> <p>8 A. Based on the other articulation that</p> <p>9 Officer Lopera said that it changed from a consensual</p> <p>10 to probably a reasonable suspicion to stop.</p> <p>11 MR. MCNUTT: We'll take that break now.</p> <p>12 THE VIDEOGRAPHER: The time is</p> <p>13 approximately 2:06 p.m. We are going off the record.</p> <p>14 (A recess was taken from 2:06 p.m.</p> <p>15 to 2:14 p.m.)</p> <p>16 THE VIDEOGRAPHER: The time is</p> <p>17 approximately 2:14 p.m. We're back on the record.</p> <p>18 BY MR. MCNUTT:</p> <p>19 Q. Chief, we're back on the record. You</p> <p>20 testified earlier that you have previously watched</p> <p>21 Ken Lopera's body-worn camera, correct?</p> <p>22 A. Yes.</p> <p>23 Q. How long ago was that?</p> <p>24 A. Before the use of force board --</p> <p>25 Q. So it's been over a year?</p>
<p style="text-align: right;">Page 131</p> <p>1 Q. -- correct?</p> <p>2 And if the suspect is demonstrating</p> <p>3 aggressive resistance, what level of force can the</p> <p>4 officer use? Low? Intermediate?</p> <p>5 A. Intermediate.</p> <p>6 MR. LAGOMARSINO: Any time you want to take</p> <p>7 a break.</p> <p>8 BY MR. MCNUTT:</p> <p>9 Q. Are you good?</p> <p>10 A. I'm good.</p> <p>11 MR. MCNUTT: Do you need one?</p> <p>12 MR. LAGOMARSINO: Yeah. I just don't want</p> <p>13 to keep going. I'm requesting a break at some point.</p> <p>14 MR. MCNUTT: No problem, Andre.</p> <p>15 BY MR. MCNUTT:</p> <p>16 Q. When does a -- do you know the definition</p> <p>17 of a consensual encounter?</p> <p>18 A. Well, it depends. Who am I giving it to?</p> <p>19 I had a lawyer tell me that any time a police officer</p> <p>20 talks to you it's a consensual encounter.</p> <p>21 Q. LVMPD 1180 says: "A consensual encounter</p> <p>22 is a completely voluntary police interaction with</p> <p>23 members of the public requiring no legal</p> <p>24 justification for the interaction where a reasonable</p> <p>25 person would feel free to disregard the police and go</p>	<p style="text-align: right;">Page 133</p> <p>1 A. -- and during the use of force board.</p> <p>2 Q. So you didn't rereview it --</p> <p>3 A. No.</p> <p>4 Q. -- prior to this deposition?</p> <p>5 One other question I forgot to ask you, are</p> <p>6 you familiar with Safe Strip?</p> <p>7 A. Yes.</p> <p>8 Q. Is it Operation Safe Strip or what do they</p> <p>9 technically call it?</p> <p>10 A. Safe Strip is just what they call it.</p> <p>11 Q. What is the mission statement of Safe</p> <p>12 Strip?</p> <p>13 A. It's to -- well, it's changed over the</p> <p>14 years, but the basic premise is to put more officers</p> <p>15 on the Strip to be closer to anything that happened,</p> <p>16 they respond to any calls that happen immediately.</p> <p>17 Q. Because of the mass congregation of people</p> <p>18 on the Strip?</p> <p>19 A. Yes. And the value of the Strip to</p> <p>20 Las Vegas.</p> <p>21 Q. Okay. So I've got the computer here with</p> <p>22 the initial still. We're going to watch the video of</p> <p>23 Ken Lopera's body-worn cam. I'll represent to you</p> <p>24 this has been produced by Metro as being Ken Lopera's</p> <p>25 authentic body-worn cam video.</p>



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35 (Pages 134 to 137)

<p style="text-align: right;">Page 134</p> <p>1 Do you recognize this still shot as we look</p> <p>2 at it?</p> <p>3 A. Yes.</p> <p>4 Q. And if you want me to adjust the screen up</p> <p>5 or down just for light, let me know.</p> <p>6 A. That's fine.</p> <p>7 Q. Do you recognize Tashii Farmer in the left</p> <p>8 corner or left side of the screen?</p> <p>9 A. Yes. I guess.</p> <p>10 Q. And Officer Ken Lopera's hand there holding</p> <p>11 a Slurpee or something?</p> <p>12 A. Coffee drink.</p> <p>13 Q. Coffee drink. Okay.</p> <p>14 Once I start playing, there will be some --</p> <p>15 we'll see a timeline running along the bottom of the</p> <p>16 screen, and I will try to annotate some of those</p> <p>17 timelines.</p> <p>18 A. Okay.</p> <p>19 Q. So I'm just going to start playing it and</p> <p>20 you, of course, know at that time body-worn cams</p> <p>21 don't have any audio for the first 30 seconds,</p> <p>22 correct?</p> <p>23 A. Right.</p> <p>24 Q. So essentially what's happened is Ken</p> <p>25 Lopera has -- when he activates his body-worn cam, it</p>	<p style="text-align: right;">Page 136</p> <p>1 A. Right.</p> <p>2 Q. And then you'll see in a little bit when</p> <p>3 we're at two seconds, you'll see some chains-link</p> <p>4 between those accounts.</p> <p>5 (Playing Video)</p> <p>6 BY MR. MCNUTT:</p> <p>7 Q. Do you see this doorway area where the two</p> <p>8 yellow cones with the chain-link are between them?</p> <p>9 A. Yes.</p> <p>10 Q. Do you believe that to be an area that can</p> <p>11 be accessed or allowed to be accessed by patrons or</p> <p>12 civilians?</p> <p>13 MR. LAGOMARSINO: Form. Foundation.</p> <p>14 THE WITNESS: It looks like it's trying to</p> <p>15 prevent people from going down that hallway.</p> <p>16 BY MR. MCNUTT:</p> <p>17 Q. Now, at this point would you call this a</p> <p>18 consensual encounter? Or would you even call it an</p> <p>19 encounter?</p> <p>20 A. I would have to hear the audio because if</p> <p>21 he's talking to him, that's a consensual encounter.</p> <p>22 But it looks -- there's no audio like he's watching</p> <p>23 him.</p> <p>24 Q. Right. Of course, the CIRT statement fills</p> <p>25 that gap in a little bit and says that he's talking</p>
<p style="text-align: right;">Page 135</p> <p>1 records the prior 30 seconds without audio; is that</p> <p>2 right?</p> <p>3 A. Yes.</p> <p>4 Q. Is there a reason Metro went with that</p> <p>5 version? Just out of curiosity, why don't they</p> <p>6 record everything?</p> <p>7 A. I don't know. I thought that was how the</p> <p>8 body camera worked.</p> <p>9 Q. Well, I think it is how the body camera</p> <p>10 worked. I just wondered why does it work that way is</p> <p>11 my question?</p> <p>12 A. I don't know. I think that's the way it</p> <p>13 came from Taser, but it could be some reason they</p> <p>14 requested it. But that was all before I was involved</p> <p>15 with body cameras so I don't know for sure.</p> <p>16 Q. So I'm going to hit play, and you'll see</p> <p>17 the 0000 here on the left.</p> <p>18 A. Okay.</p> <p>19 (Playing Video)</p> <p>20 BY MR. MCNUTT:</p> <p>21 Q. Now, we see Tashii Farmer approach Ken</p> <p>22 Lopera. And behind him, do you see the doorway area?</p> <p>23 A. Yes.</p> <p>24 Q. And do you see the yellow cone where Tashii</p> <p>25 Farmer is?</p>	<p style="text-align: right;">Page 137</p> <p>1 to him, and we can read that in a minute.</p> <p>2 A. If it's talking to him, that's a consensual</p> <p>3 stop.</p> <p>4 (Playing Video)</p> <p>5 BY MR. MCNUTT:</p> <p>6 Q. Now we're at 16 seconds. At this point,</p> <p>7 Tashii Farmer has crashed through the little -- the</p> <p>8 yellow barricade, correct?</p> <p>9 MR. LAGOMARSINO: Form.</p> <p>10 THE WITNESS: Yes.</p> <p>11 BY MR. ANDERSON:</p> <p>12 Q. And is now starting to run down the</p> <p>13 employee-only hallway, correct?</p> <p>14 A. Yes.</p> <p>15 Q. And he was almost within arm's reach of</p> <p>16 Ken Lopera at this point, correct?</p> <p>17 A. Yes.</p> <p>18 Q. And at least from Ken Lopera's body-worn</p> <p>19 cam, Ken Lopera got a direct look into Tashii</p> <p>20 Farmer's face and pupils, correct?</p> <p>21 A. Yes.</p> <p>22 MR. LAGOMARSINO: Form.</p> <p>23 (Playing Video)</p> <p>24 MR. LAGOMARSINO: Hold on a second. Are</p> <p>25 you saying the camera reflects where Lopera's eyes</p>

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36 (Pages 138 to 141)

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<p>1 were? 2 MR. MCNUTT: That's not what I said, no. 3 BY MR. MCNUTT: 4 Q. At this point you have no problem with 5 Officer Lopera or any officer pursuing Tashii Farmer 6 down this hallway, correct? 7 A. Correct. 8 (Playing Video) 9 BY MR. MCNUTT: 10 Q. So we're at 30 seconds. We now have audio. 11 Any idea where Officer Lif is or how she at 12 this point isn't right next to Ken Lopera? 13 A. Well, I can only go by her statement which 14 said that she didn't see him run down the hallway. 15 (Playing Video) 16 BY MR. MCNUTT: 17 Q. Do you know if when Officer Lopera yelled 18 Lif's name there, whether he was saying it into his 19 radio or not? 20 A. I don't know for sure. But it doesn't -- 21 it wouldn't be how we would talk to other officers on 22 the radio. 23 Q. How would he have done that on the radio? 24 A. Either call her by her call sign -- that's 25 normally the way we would do it. Not by first name</p>	<p>1 BY MR. MCNUTT: 2 Q. So he said, "Stop. Don't move. You're 3 going to get tased." 4 That's per policy to give that warning, 5 correct? 6 A. You should if possible give that warning. 7 Q. But you don't have to, correct? 8 A. No. 9 Q. So Tashii Farmer at 1:38 appears that he's 10 on his back and it does appear that the ECD device 11 worked and achieved neuromuscular incapacitation, 12 correct? 13 A. He went directly to the ground, so yes. 14 (Playing Video) 15 BY MR. MCNUTT: 16 Q. So at 1:40 Ken Lopera says, "Don't move," 17 to Tashii Farmer, correct? 18 A. Yes. 19 Q. That's a lawful command, right? 20 A. Yes. 21 Q. Tashii Farmer is on his back when he says 22 that, correct? 23 A. Yes. 24 (Playing Video) 25</p>
Page 139	Page 141
<p>1 or last name. 2 (Playing Video) 3 BY MR. MCNUTT: 4 Q. So we're at 1:33. Ken Lopera has given a 5 command, "Stop, don't move." Correct? 6 A. Yes. 7 Q. Is that a lawful command that he's giving 8 at that point? 9 A. Yes. 10 Q. Now, my next question is tell me whether 11 Tashii Farmer complies. 12 (Playing Video) 13 BY MR. MCNUTT: 14 Q. Did Tashii Farmer comply? 15 A. No. 16 Q. Now, Ken Lopera said in his CIRT statement 17 at this point that he believed Tashii Farmer was 18 going to carjack the white Toyota pickup truck. Was 19 use of the -- if that was correct and that's his 20 perception, was use of the Taser authorized at this 21 point? 22 A. Well, it's going to be more than his 23 perception. But I'll go ahead and say yes. 24 (Playing Video) 25</p>	<p>1 BY MR. MCNUTT: 2 Q. What's Tashii Farmer done between 1:40 and 3 1:44? 4 A. It looks like he's moving, trying to sit 5 up. 6 Q. And reaching towards his shoe, correct? 7 A. Yes. 8 Q. Is it possible that he has a weapon in his 9 shoe? 10 A. Possible. 11 Q. And Ken Lopera hasn't checked him for 12 weapons at this point, correct? 13 A. Correct. 14 Q. Has Tashii Farmer complied with Ken 15 Lopera's directive to not move? 16 A. No. 17 Q. Is four seconds enough for Ken Lopera to 18 have assessed what Tashii Farmer -- whether he was 19 complying or not? 20 A. He's definitely not complying, so yes. 21 Q. So the statement earlier by Alsup that he 22 only gave him six seconds, that's not accurate in 23 your view, because here four seconds was enough to 24 know that Tashii Farmer wasn't complying, correct? 25 A. Yes.</p>

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\* \* \* Videotaped Deposition \* \* \*

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<p style="text-align: right;">Page 142</p> <p>1 Q. So, in fact, Ken Lopera did give Tashii 2 Farmer enough time to comply with his lawful command, 3 correct? 4 A. Well, you have to watch the whole video. 5 Q. We're going to. But just this part. 6 A. I'm saying when you stop it like that and 7 do each time it's different than -- like, even one of 8 the commands was to the guy in the truck. 9 Q. So should Detective Alsup not have done 10 that in the arrest report? 11 A. Yes, I already -- 12 Q. Because that's what he did in the arrest 13 report. 14 A. I already agreed that he should have worded 15 it better in the arrest report. 16 Q. I didn't even ask you those questions. 17 That's exactly what Alsup did. Alsup broke this down 18 just like I'm breaking it down. So should he not 19 have done that? 20 MR. LAGOMARSINO: Objection. Form. 21 THE WITNESS: Everybody that looks at video 22 looks at the whole thing, and then they break it down 23 by seconds. 24 BY MR. MCNUTT: 25 Q. That's what we're going to do here.</p>	<p style="text-align: right;">Page 144</p> <p>1 enough. 2 Q. True. And so after, you know, running for 3 60 seconds, chasing the suspect, Ken Lopera did not 4 say everything perfectly like we would have liked him 5 to, correct? 6 A. Right. 7 Q. Is that a violation of policy? 8 A. Not a violation. And not unusual. 9 Q. It's just a mistake? 10 A. Yes. 11 (Playing Video) 12 BY MR. MCNUTT: 13 Q. So we're now at 1:52 after the second ECD 14 strike. Ken Lopera said don't move, correct? 15 A. Yes. 16 Q. And Tashii Farmer then drew his knees up to 17 his waist, correct? 18 A. Yes. 19 Q. Is that not moving? 20 A. That's moving. 21 Q. Is that complying with his lawful 22 command? 23 A. Yes. I mean, no, it's not complying. 24 Sorry. 25 (Playing Video)</p>
<p style="text-align: right;">Page 143</p> <p>1 From this 1:40 to 1:44, Ken Lopera gave a 2 lawful command, and Tashii Farmer did not comply with 3 it, correct? 4 A. Yes. 5 Q. And in your opinion, was that four seconds 6 reasonable for Ken Lopera to have given? 7 A. Yes. 8 Q. Okay. Thank you. 9 (Playing Video) 10 BY MR. MCNUTT: 11 Q. So because there was no compliance, Ken 12 Lopera gave him another cycle of the ECD, correct? 13 A. Yes. 14 Q. And Tashii Farmer goes to his back, 15 correct? 16 A. Yes. 17 Q. Was that use of the Taser authorized per 18 Metro policy? 19 A. Yes. But he also said, "Get on your 20 stomach," at the same time he tased him. Which is 21 not possible to do. 22 Q. Okay. Sure. And sometimes -- 23 A. Earlier that's what I said. Some of the 24 commands were conflicting. And so you can't say, 25 okay, he told him not to move five times and that's</p>	<p style="text-align: right;">Page 145</p> <p>1 BY MR. MCNUTT: 2 Q. So he then -- so we're now at 1:56. Ken 3 Lopera says, "Get on your stomach," correct? And 4 cycled the ECD? 5 A. Yes. 6 Q. Now, do you have a problem with that? 7 A. I would have preferred the time between the 8 commands and the cycling to be longer apart. 9 Q. In this instance? 10 A. Yes, in this instance. 11 Q. Okay. 12 A. So that's what you're asking me, I thought. 13 Q. Yes. 14 A. Yes. I would prefer that there's some time 15 between the commands and the Taser cycling. 16 Q. So it is appropriate to break this down, 17 because in the first three commands, we saw that Ken 18 Lopera did give a reasonable time for compliance and 19 Tashii Farmer did not comply, but you're saying in 20 this one instance that he did not? 21 MR. LAGOMARSINO: Objection. Misstates. 22 BY MR. MCNUTT: 23 Q. Is that fair? 24 A. Yes. 25 (Playing video)</p>

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\* \* \* Videotaped Deposition \* \* \*

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1 BY MR. MCNUTT:  
2 Q. So he cycles the ECD at 1:56-ish, and  
3 Tashii Farmer is taking his left hand and putting it  
4 in his lower back.  
5 Do you see that?  
6 A. Yes.  
7 Q. Do you have any idea about what he's doing  
8 there?  
9 A. Based off the video, it looks like he's  
10 just got his hand in his back, but now we know that  
11 he was trying to pull the probes out.  
12 Q. And Officer Lif said she thought maybe --  
13 when she reviewed the video, she said she thought  
14 maybe he was reaching for a weapon.  
15 MR. LAGOMARSINO: Form.  
16 THE WITNESS: It could be. That's her  
17 perception.  
18 BY MR. MCNUTT:  
19 Q. So different officer, different reasonable  
20 officers can have different perceptions of the same  
21 events occurring?  
22 A. Yes.  
23 Q. So this is, Ken Lopera at 1:58 says, "Get  
24 on your stomach." And Tashii Farmer says, "I will."  
25 Tell me if he does do that.

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1 Q. It's just you would prefer that --  
2 A. Best practice would be to have another  
3 officer there. Because he's not complying with your  
4 commands. And if you go hands-on, you're probably  
5 going to be in an altercation.  
6 Q. But he's already in an altercation, right?  
7 A. A physical altercation.  
8 Q. So he's now cycled the ECD three times.  
9 And there's no other officers there. And you don't  
10 want him to go hands-on even though per policy he's  
11 allowed to.  
12 What would -- wouldn't in your scenario he  
13 have had to cycle the ECD another time?  
14 MR. LAGOMARSINO: Form.  
15 BY MR. MCNUTT:  
16 Q. Unless Tashii Farmer immediately complied?  
17 MR. LAGOMARSINO: Form.  
18 THE WITNESS: We don't teach people to go  
19 hands-on with one hand and do the Taser with your  
20 other hand. So would he have to? No. I would think  
21 he should holster his Taser and go hands-on with both  
22 hands.  
23 BY MR. MCNUTT:  
24 Q. So that's a little different than what you  
25 said. You're saying he should have holstered up the

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1 (Playing Video)  
2 BY MR. MCNUTT:  
3 Q. At 1 -- excuse me, at 2:02 where is  
4 Tashii Farmer?  
5 A. He rolled across his stomach onto his back  
6 again.  
7 Q. Is that complying?  
8 A. No.  
9 Q. So Ken Lopera at 2:05 is now in physical  
10 contact with Tashii Farmer, correct?  
11 A. Yes.  
12 Q. And do you see his left hand grabbing  
13 Tashii Farmer's left wrist area?  
14 A. Yes.  
15 Q. Do you have any problem with Ken Lopera  
16 being in physical contact with Tashii Farmer?  
17 A. So I would prefer based on the way we train  
18 people, is before you go hands-on, you have another  
19 officer there.  
20 Q. Okay. But is Ken --  
21 A. This is what we call a hands-on by grabbing  
22 his wrist.  
23 Q. Fair. Is Ken Lopera out of policy by doing  
24 this?  
25 A. No.

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1 ECD already and then it's okay to go hands-on, in  
2 your opinion?  
3 A. Well, he's gone hands-on, but I think he  
4 still has his Taser in his other hand. Because you  
5 stopped the video I can't see it, but that's what I  
6 think he does.  
7 Q. I think you're right.  
8 A. You probably know the video better than me.  
9 So I'm trying to -- is this -- that's not  
10 how we prefer people to do it. It's not a violation  
11 of policy.  
12 Q. Understood. So my question, let's back up.  
13 If he had not gone hands-on, he's already cycled the  
14 Taser three times, so -- and there's no other  
15 officers there to help him at this point.  
16 A. Right.  
17 Q. In fact, we're still probably 30 seconds  
18 away from any officers showing up. Which is a long  
19 time in a fight, correct?  
20 A. Yes.  
21 Q. Can be an eternity in a fight, correct?  
22 A. Yes.  
23 Q. So if he would not have gone hands-on,  
24 wouldn't his only other option have been to cycle the  
25 Taser a fourth time?

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39 (Pages 150 to 153)

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1 A. No. There's other options.  
 2 Q. Such as?  
 3 A. Cap stun, baton. None of these are going  
 4 to look good, but there's other options.  
 5 Q. But, now, cap stun is not an option now, is  
 6 it? Because you cannot per policy use cap stun and  
 7 ECD on the same suspect, can you?  
 8 A. Well, you shouldn't.  
 9 Q. Well, are we going to say that you are  
 10 going to recommend to this officer that he should?  
 11 A. Well, I can't stop looking at his hand on  
 12 his wrist where he has his Taser in his other hand --  
 13 Q. Okay.  
 14 A. So that's not how we teach people.  
 15 Q. Okay. So if Ken did this and it wasn't  
 16 perfect, but it wasn't out of policy, would you have  
 17 preferred he did this or would you have preferred he  
 18 pull out his baton and start baton strikes?  
 19 A. But the mistakes that Officer Lopera made  
 20 earlier led to this. Now, by that I mean he didn't  
 21 let his partner know where he was going. He didn't  
 22 get on the radio until he was already on the ground  
 23 and already had tased him and asked for a Code Red.  
 24 So what I would prefer to see him do would  
 25 be to call out he was in a foot pursuit on the radio

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1 because to even see any interaction you have to see  
 2 the Venetian video with the truck and Tashii Farmer  
 3 and the driver.  
 4 So this catches up while he's already  
 5 backed away from the truck, Tashii Farmer. Correct?  
 6 BY MR. MCNUTT:  
 7 Q. I think -- we're a slightly different  
 8 interpretation, but I don't want to argue that  
 9 point.  
 10 A. But my issue is the use of the Taser. His  
 11 justification is an attempted carjacking, and I don't  
 12 see that.  
 13 Q. Okay.  
 14 A. So after that, if that is justified, based  
 15 on there is an attempted carjacking, then I have no  
 16 problems right now.  
 17 Q. And Ken Lopera did see that. Can you give  
 18 the benefit of the doubt to your officer?  
 19 MR. LAGOMARSINO: Form.  
 20 THE WITNESS: That's not what we do.  
 21 BY MR. MCNUTT:  
 22 Q. Okay. That's unfortunate.  
 23 MR. LAGOMARSINO: Move to strike.  
 24 (Playing video.)  
 25

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1 and ask for a Code Red. I don't know how much time  
 2 it took for him to catch up to him, but that could be  
 3 the 30 seconds we're looking for to get another  
 4 officer there.  
 5 So each mistake could be small, but when it  
 6 adds up it could be this is a better way to do this?  
 7 Is he outside of policy? No.  
 8 Q. These are the types of things that you hot  
 9 wash after the fact to make your officers better,  
 10 correct?  
 11 A. Yes. Exactly.  
 12 MR. LAGOMARSINO: Form.  
 13 BY MR. MCNUTT:  
 14 Q. But it doesn't mean they're liable for the  
 15 mistake, correct?  
 16 MR. LAGOMARSINO: Form.  
 17 THE WITNESS: Well, we don't determine  
 18 liability.  
 19 BY MR. MCNUTT:  
 20 Q. But in this case, he's not -- up to this  
 21 point, 2:05, he's not even out of policy, correct?  
 22 MR. LAGOMARSINO: Form.  
 23 THE WITNESS: I haven't seen anything right  
 24 there. He says that there was an attempted  
 25 carjacking. The video certainly doesn't show that

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1 BY MR. MCNUTT:  
 2 Q. Do you hear that, "Okay. Okay, sir"?  
 3 A. Yes.  
 4 Q. Okay. Does that sound like Ken Lopera or  
 5 Tashii Farmer?  
 6 A. I can't tell.  
 7 (Playing Video)  
 8 THE WITNESS: I think he said "I will."  
 9 BY MR. MCNUTT:  
 10 Q. I was just going to ask you about that.  
 11 So he said get on your stomach, and then  
 12 Tashii Farmer clearly said, "I will."  
 13 Going back to that, "Okay. Okay, sir." Do  
 14 you think that was Tashii?  
 15 A. I think that was Tashii Farmer now.  
 16 Q. You do? Okay. I'm going to play that  
 17 again because I don't think it is but you're  
 18 answering the question.  
 19 (Playing Video)  
 20 THE WITNESS: He said, "I will. I will."  
 21 BY MR. MCNUTT:  
 22 Q. Is that "Okay, sir" --  
 23 A. I think that's him.  
 24 Q. Okay. Fair enough.  
 25 (Playing Video)



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40 (Pages 154 to 157)

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<p>1 BY MR. MCNUTT: 2 Q. Now, let's play it a little bit more. 3 Now, you hear the tick, tick, tick, tick, 4 tick of the Taser, correct? And the various phrases, 5 you understand it to be drive stun or is he still 6 cycling it? What would you call that? 7 A. I think it sounds like he's cycling it 8 again. 9 Q. Now, did Tashii Farmer prone out in NMI, 10 neuromuscular incapacitation? 11 A. He didn't prone out, but it looked like he 12 was shaking. 13 Q. It looked like Tashii Farmer was shaking? 14 A. Yeah. That's what it looked like to me. 15 Q. I'm not following you in terms of he was 16 shaking. What does that... 17 A. When I watch the video -- 18 Q. The whole thing is shaking. 19 A. When he was cycling it, he did not go to 20 the -- 21 Q. The NMI? 22 A. The NMI that we're looking for, but it 23 looked like it was affecting him somewhat is my 24 point. 25 Q. I understand your answer now. I didn't</p>	<p>1 assistance? 2 A. Sure. 3 Q. Now, is Ken on the hook for any of the 4 commands that they, the security guards, gave Tashii 5 that conflicted with his commands? 6 MR. LAGOMARSINO: Form. 7 THE WITNESS: Is he responsible for what 8 they say? 9 MR. LAGOMARSINO: Form. 10 BY MR. MCNUTT: 11 Q. Yes. 12 A. Well, he asked them for help, okay? If you 13 ask someone for help, you need to tell them exactly 14 what you want them to do. Which he didn't, that I 15 remember, communicate very well. 16 And so that led to the conflicting 17 commands. 18 Q. So in the middle -- 19 A. I think we're going to hear. 20 Q. In the middle of the fight, Ken didn't 21 supervise the Venetian security guards very well. 22 A. Well, "Help me. Can you give me a hand? 23 Can you give me some help?" Right? 24 Q. I think he said give me a hand here or 25 something like that.</p>
Page 155	Page 157
<p>1 understand it prior to that. 2 (Playing Video) 3 BY MR. MCNUTT: 4 Q. So did you hear the "help me out" that Ken 5 said? 6 A. Yes. 7 Q. And then we're going to start to see, see 8 the legs in the left side of the screen here? 9 A. Yes. 10 Q. And then you'll see other -- these officers 11 have testified that they're Venetian officers that 12 approach -- 13 A. Venetian security? 14 Q. Yes, sir. So we still don't have any Metro 15 officers. 16 A. Right. 17 Q. And Ken calls out for them to help. 18 Do you think, is it common for law 19 enforcement officers to ask civilian security guards 20 for assistance? 21 A. Sure. 22 Q. In this circumstance where they're coming 23 from the Venetian? 24 A. Yes. 25 Q. So it was okay for Ken to ask for their</p>	<p>1 A. Whatever he said, you know, obviously, 2 we're looking back now, but I would prefer, hey, we 3 need to get cuffs on this guy. Something to give 4 some kind of direction. 5 Q. But nothing he did was out of policy at 6 this point? 7 A. No. 8 (Playing Video) 9 BY MR. MCNUTT: 10 Q. Now, at this point Ken Lopera is not in 11 physical contact, but one of the officers, the 12 security officers were, correct? 13 MR. LAGOMARSINO: Objection. Form. 14 THE WITNESS: Correct. 15 BY MR. MCNUTT: 16 Q. And we're at 2:23? 17 MR. LAGOMARSINO: Form. 18 THE WITNESS: It sounds like he's cycling 19 again. 20 BY MR. MCNUTT: 21 Q. Can you tell from that -- and I can back it 22 up at any point and watch -- 23 A. It doesn't look like the probes are working 24 like they were earlier. 25 MR. LAGOMARSINO: I'm just going to make an</p>

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41 (Pages 158 to 161)

<p style="text-align: right;">Page 158</p> <p>1 objection that at the point where it stopped, there's</p> <p>2 no depiction of physical contact between the security</p> <p>3 officer and Tashii Farmer.</p> <p>4 MR. ANDERSON: That's correct. At the</p> <p>5 point where it was stopped. The question was just</p> <p>6 prior to that.</p> <p>7 (Playing Video)</p> <p>8 BY MR. MCNUTT:</p> <p>9 Q. Do you hear that, "Okay, sir. Okay, sir"?</p> <p>10 A. Yes.</p> <p>11 Q. Who is that from?</p> <p>12 A. I thought that was Tashii Farmer again.</p> <p>13 Q. Okay.</p> <p>14 (Playing Video)</p> <p>15 BY MR. MCNUTT:</p> <p>16 Q. So we're at 2:32.</p> <p>17 And this is about the point where we</p> <p>18 know -- well, according to Detective Alsup, this is</p> <p>19 where he's holstering up the ECD. So I'm going to</p> <p>20 back it up so you can see.</p> <p>21 Let me ask you if you can see that. We're</p> <p>22 at 2:24.</p> <p>23 Tell me when he holsters up the ECD.</p> <p>24 (Playing Video)</p> <p>25</p>	<p style="text-align: right;">Page 160</p> <p>1 Q. It's 2:33, and I'm going to point it over</p> <p>2 Ken Lopera's collar.</p> <p>3 A. Okay.</p> <p>4 Q. Do you see that? And do you see his thumb?</p> <p>5 So this is clearly his right hand, correct?</p> <p>6 A. Okay.</p> <p>7 (Playing Video)</p> <p>8 BY MR. MCNUTT:</p> <p>9 Q. Did you hear that strike?</p> <p>10 MR. LAGOMARSINO: Objection. Form.</p> <p>11 THE WITNESS: I heard something that</p> <p>12 sounded like a strike, but I didn't see it on the</p> <p>13 video.</p> <p>14 BY MR. MCNUTT:</p> <p>15 Q. What do you think it was?</p> <p>16 MR. LAGOMARSINO: Objection. Form.</p> <p>17 THE WITNESS: I don't know.</p> <p>18 BY MR. MCNUTT:</p> <p>19 Q. What do you think could have made that</p> <p>20 sound?</p> <p>21 MR. LAGOMARSINO: Same objection.</p> <p>22 THE WITNESS: I don't know. I'm guessing.</p> <p>23 BY MR. MCNUTT:</p> <p>24 Q. Do you know who Detective Casey Kirkegard</p> <p>25 is?</p>
<p style="text-align: right;">Page 159</p> <p>1 BY MR. MCNUTT:</p> <p>2 Q. So I just stopped it at 2:31. Can you see</p> <p>3 Tashii Farmer's hands?</p> <p>4 A. Yes.</p> <p>5 Q. What are his hands doing?</p> <p>6 A. They're moving around behind his back.</p> <p>7 Q. Are his hands being restrained?</p> <p>8 A. No.</p> <p>9 Q. And is that -- are they behind his back or</p> <p>10 in front of him?</p> <p>11 A. I don't know. It's kind of blurry right</p> <p>12 there, but it looks like they were behind his back</p> <p>13 and they've moved now to the side. I don't know.</p> <p>14 Q. Now, tell me if at any point -- how would</p> <p>15 you describe this resistance?</p> <p>16 A. To me that's still active because this is</p> <p>17 common for people that don't want to be handcuffed.</p> <p>18 He just doesn't want to get the handcuffs on, and</p> <p>19 he's moving his hands so you can't handcuff him.</p> <p>20 (Playing Video)</p> <p>21 BY MR. MCNUTT:</p> <p>22 Q. Do you see Tashii Farmer's hand in the</p> <p>23 video?</p> <p>24 A. No. Right now where you've got it stopped</p> <p>25 I don't see it.</p>	<p style="text-align: right;">Page 161</p> <p>1 A. Yes. From CIRT.</p> <p>2 Q. Yeah. I asked her that question. She said</p> <p>3 it was the wind. That's what she said.</p> <p>4 A. Well, I don't think it was the wind.</p> <p>5 Q. Do you think it would have been Tashii</p> <p>6 Farmer punching Ken Lopera?</p> <p>7 MR. LAGOMARSINO: Form.</p> <p>8 THE WITNESS: It could have been. But it</p> <p>9 could have been Ken Lopera or one of the security</p> <p>10 guards punching someone.</p> <p>11 BY MR. MCNUTT:</p> <p>12 Q. Okay.</p> <p>13 A. It sounds like something hitting clothing.</p> <p>14 Q. And something hitting clothing that the</p> <p>15 body-worn cam mic picked up, correct?</p> <p>16 A. Yes.</p> <p>17 Q. So were you ever a detective?</p> <p>18 A. Yes.</p> <p>19 Q. So would that imply to you that the strike</p> <p>20 landed near the body-worn cam mic?</p> <p>21 MR. LAGOMARSINO: Form.</p> <p>22 THE WITNESS: No, you can't tell.</p> <p>23 BY MR. MCNUTT:</p> <p>24 Q. But we know Tashii Farmer's right hand was</p> <p>25 free in those seconds.</p>

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42 (Pages 162 to 165)

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<p>1 MR. LAGOMARSINO: Objection. Form. 2 BY MR. MCNUTT: 3 Q. Isn't that true? 4 A. Well, we saw it on video that it was free, 5 but it doesn't show it coming towards Lopera or 6 any -- I mean, I can't evaluate just the noise. 7 Q. But don't we always evaluate partial 8 evidence? Isn't that what we call circumstantial 9 evidence? 10 MR. LAGOMARSINO: Form. 11 BY MR. MCNUTT: 12 Q. I grant you that we don't have a freeze 13 frame of Tashii Farmer punching Ken Lopera, but we 14 see his hand free and then we hear a strike hit Ken 15 Lopera's body-worn cam. 16 A. I can't go that far and guess that. 17 (Playing Video) 18 BY MR. MCNUTT: 19 Q. So do you see how the body -- the camera is 20 very shaky and moving around? 21 A. Yes. 22 Q. Does that imply to you that Tashii Farmer 23 is complying with Ken Lopera's commands to get on his 24 stomach and stay still? 25 A. The only thing it implies to me is Ken</p>	<p>1 Q. I didn't ask you if you could see it. I 2 just said coupled with the fact that that's what Ken 3 said in his CIRT statement. 4 A. Yeah. I can only go by what I see. And 5 that was, you know, this is all things that we looked 6 at and talked about. 7 You know, the officer has a perception and 8 he reports what he saw and what he did for use of 9 force and it has to be justified. 10 Now, what I see is someone that doesn't 11 want to be handcuffed. He may or may not have thrown 12 one punch, but he still is resisting his hands being 13 placed behind his back, which is not to me aggressive 14 resistance. It's someone who doesn't want to be 15 handcuffed, which we see almost all the time. 16 Q. So let's go with one hypothetical that 17 there was no aggressive resistance whatsoever. 18 There's just active resistance, correct? 19 A. Right. 20 Q. Was -- all of Ken's use of force up to this 21 point was within policy, correct? 22 MR. LAGOMARSINO: Objection. Form. 23 THE WITNESS: If you also agree that the 24 Taser was justified -- first of all, no. Because the 25 Taser cycles were too many compared to the three it</p>
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<p>1 Lopera is moving his arm. 2 Q. Okay. Why his arm? What do you mean? 3 A. Because his body camera is attached to his 4 lapel on his shoulder. 5 Q. How many officers participated in 6 handcuffing Tashii Farmer? 7 A. I believe four. 8 Q. Based upon that fact alone, do you think 9 Tashii Farmer was resisting throughout the 10 handcuffing process? 11 A. Was he resisting being handcuffed? Yes. 12 Q. Is it possible that what we saw at around 13 2:34 was a strike by Tashii Farmer? 14 A. Is it possible? 15 Q. Yes. 16 A. Yes. 17 Q. And if so, wouldn't that mean that it 18 was aggravated aggressive resistance, per the 19 definition? 20 A. Yeah. I guess if that is what he's 21 saying. 22 Q. And coupled with the fact that Ken Lopera 23 said in his CIRT statement that Tashii Farmer was 24 reaching to grab his Taser out of his holster? 25 A. Well, I definitely can't see that.</p>	<p>1 should have been. He should have holstered his Taser 2 and went completely hands-on with both hands. 3 BY MR. MCNUTT: 4 Q. But -- 5 A. Instead of continued to use the Taser, 6 which for the most part the extra cycles appeared 7 like it didn't work like the first three. 8 So why would he keep doing it? 9 Q. He was in the heat of the moment and -- 10 A. Right. 11 Q. -- and sympathetic response -- 12 A. Right. If that was all that happened, then 13 he would get some retraining. 14 Q. So assuming we're just in active resistance 15 here, and Ken Lopera is about to employ the LVNR or 16 some form of a neck restraint, correct? The LVNR is 17 authorized in this low level use of force for active 18 resistance, correct? At that time? 19 A. At that time, yes. 20 Q. Do you know the policy, if it's per Metro 21 policy, for the officer employing the LVNR to keep 22 the encircling arm in place until the suspect is 23 handcuffed? 24 A. Yes. 25 Q. So if Ken Lopera in the video has his</p>

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<p style="text-align: right;">Page 166</p> <p>1 encircling arm around Tashii Farmer's neck, and as 2 you testified earlier, we don't know how much, if 3 any, pressure was being applied, but he's authorized 4 and per Metro policy to keep that in place until 5 Tashii Farmer is in handcuffs, correct? 6 A. That's what policy says. 7 Q. Okay. And do you know if he did that in 8 this case? 9 A. Did he do that or did he get handcuffed? 10 Q. No. Did Ken Lopera keep his encircling arm 11 in place until Tashii Farmer was handcuffed? 12 A. Yes. 13 MR. MCNUTT: Andre, let me look at my 14 notes, but I'll turn you over to him for any 15 follow-up, and then I may have one or two to finish 16 out. 17 MR. ANDERSON: I have about ten minutes. 18 I'll go before Andre. 19 MR. MCNUTT: Thank you for your time. 20 THE WITNESS: No problem. 21 THE VIDEOGRAPHER: The time is 22 approximately 2:48 p.m. We are going off the 23 record. 24 (A recess was taken from 2:48 p.m. 25 to 2:50 p.m.)</p>	<p style="text-align: right;">Page 168</p> <p>1 BY MR. ANDERSON: 2 Q. In your experience as an officer, should 3 Crumrine have been able to tell how much pressure was 4 being applied to the neck? 5 A. If it was applied correctly, he should be 6 able to tell. 7 Q. Is it possible that the encircling arm was 8 just in the area of the neck and not applying any 9 pressure? 10 A. Yes. 11 Q. When Sergeant Crumrine arrived, what should 12 have been his initial focus? What should have been 13 his first goal with respect to Mr. Farmer? 14 A. The -- he should be ensuring the tactics 15 used by the officers are effective. And if not, 16 change tactics. 17 Q. And you've talked about Metro has a policy 18 with respect to duty to intervene, correct? 19 A. Yes. 20 Q. Is giving verbal commands a form of 21 intervention? 22 A. Yes. 23 Q. Is going hands-on to assist with 24 handcuffing a form of intervention? 25 A. Yes.</p>
<p style="text-align: right;">Page 167</p> <p>1 THE VIDEOGRAPHER: The time is 2 approximately 2:50 p.m. We're back on the record. 3 4 EXAMINATION 5 BY MR. ANDERSON: 6 Q. Chief McGrath, I just want to follow up on 7 some testimony that you just gave to Mr. McNutt. 8 You stated that it's policy that when an 9 LVNR or neck restraint is being performed that it's 10 policy to keep the encircling arm in place until 11 handcuffing is complete, correct? 12 A. Yes. 13 Q. You also testified earlier that from your 14 watching of the video, you could not tell at any time 15 how much pressure, if any, Lopera was applying to 16 Mr. Farmer's neck; is that correct? 17 A. Correct. 18 Q. Based upon your training and experience and 19 your review of this case, when Officer Crumrine first 20 arrived, would he have been able to tell how much 21 pressure, if any, Officer Lopera was applying to 22 Mr. Farmer's neck? 23 MR. LAGOMARSINO: Form. 24 THE WITNESS: No. He could not. I could 25 not tell.</p>	<p style="text-align: right;">Page 169</p> <p>1 Q. Did Sergeant Crumrine give verbal commands? 2 A. I'm sorry, I was moving. 3 Q. You're fine. Did Sergeant Crumrine give 4 verbal commands to Officer Lopera? 5 A. Yes. 6 Q. Did Sergeant Crumrine go hands-on and 7 attempt to facilitate handcuffing? 8 A. Yes. 9 Q. Do you agree in this case that Sergeant 10 Crumrine actually intervened? 11 A. He did some intervention. I wish he would 12 have done more. 13 Q. Why do you wish he would have done more? 14 A. Because we expect more of our supervisors. 15 Q. Were you holding Sergeant Crumrine to a 16 higher standard than, say, Officer Tran and Flores? 17 A. Yes. 18 Q. And is that based upon Las Vegas 19 Metropolitan Police Department's policies? 20 A. Well, it's based on several things. First 21 of all, Officer Tran and Flores were on different 22 parts of Officer Farmer (sic), and they're focused 23 on what they're doing to get him in custody. And 24 Officer -- Sergeant Crumrine is seeing the overall 25 use of force, and so he should take charge of</p>

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<p>1 that scene and start directing people of what to 2 do. 3 Q. So your criticisms of Sergeant Crumrine are 4 based upon his actions as a supervisor and not as a 5 regular officer? 6 A. That's correct. 7 Q. If you were evaluating him as a regular 8 officer, would you believe that he intervened in this 9 case? 10 A. Yes. 11 Q. And did you believe that Tran and Flores 12 intervened by facilitating handcuffing? 13 A. Yes. 14 Q. Then you were asked a question earlier by 15 Mr. Lagomarsino where you said at some point you 16 would like to -- you would like to see an officer 17 physically pry the arms off the neck of the suspect; 18 is that fair? 19 A. Yes. 20 Q. Okay. Would an officer ever pry the arms 21 off the neck of a suspect before handcuffing was 22 complete? 23 A. On an LVNR? 24 Q. On an LVNR, yes. 25 A. Probably not.</p>	<p>1 FURTHER EXAMINATION 2 BY MR. LAGOMARSINO: 3 Q. These are crime scene photos that were 4 taken by Metro after the fact, starting with LVMPD 5 2254 and going all the way through and inclusive of 6 2273. 7 These pictures appear to be mostly from the 8 back of the house but around the Coffee Bean &amp; Tea 9 Leaf where the initial interaction occurred; is that 10 correct? 11 A. Yes. 12 Q. Do you see anywhere in these almost 20 13 pictures where it says that that's a restricted area 14 or that it's employee only? 15 A. No. 16 (Exhibit 11 was marked for 17 identification.) 18 BY MR. LAGOMARSINO: 19 Q. I'm handing you some photos that were taken 20 after the fact of Officer Lopera's Taser. They're 21 Bates for the record 2309, 2310 and 2311. 22 I'll have you look at 2310. What does 2310 23 depict? 24 A. The sticker that's on the Taser. 25 Q. And it has a warning in capital letters</p>
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<p>1 Q. Would you want the suspect to be handcuffed 2 before you took any physical intervention against 3 another officer? 4 A. Yes. 5 Q. In your review of the evidence in this case 6 in your role in the use of force or in tactical 7 board, when Sergeant Crumrine arrived, did he have 8 any information that would have led him to believe 9 that excessive force was being used based upon what 10 he perceived? 11 A. No. 12 Q. When Sergeant Crumrine and Officers Flores 13 and Tran arrived, would they have been justified in 14 believing that Ken Lopera was using reasonable 15 force? 16 A. Yes. 17 Q. So it's reasonable for an officer to assume 18 that other officers have acted reasonably prior to 19 their arrival? 20 A. Yes. 21 MR. ANDERSON: I have nothing further. 22 THE WITNESS: Very efficient. 23 MR. ANDERSON: Thank you. 24 (Exhibit 10 was marked for 25 identification.)</p>	<p>1 with an exclamation point in orange and yellow, 2 correct? 3 A. Yes. 4 Q. And is one of the warnings that the Taser 5 can cause death or serious injury? 6 A. No. Unless I'm missing it. 7 Q. Go to the second bullet down. So I'll 8 reask the question. 9 A. Under warning? 10 Q. Under warning does it say that -- 11 A. Oh, there it is. 12 Q. -- it can cause death -- 13 A. It can cause death or serious injury. 14 Q. It says that on the warning, correct? 15 A. Yes. 16 Q. Do you believe that warning to be false? 17 MR. ANDERSON: Objection. Form. 18 THE WITNESS: Do I believe it to be false? 19 No. 20 BY MR. LAGOMARSINO: 21 Q. So in certain situations, the use of a 22 Taser apparently can be considered deadly force? Let 23 me rephrase. 24 I'm not saying how Metro characterizes or 25 classifies deadly force. I'm just saying in everyday</p>



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45 (Pages 174 to 177)

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<p>1 terms, can a Taser kill somebody?</p> <p>2 A. With other factors, yes.</p> <p>3 Q. So let's talk about those. So if somebody</p> <p>4 is perceived to be high on illegal drugs, could that</p> <p>5 enhance the risk of death?</p> <p>6 A. I would think so. I don't know for sure.</p> <p>7 Q. There was some discussion earlier about</p> <p>8 what Lopera may or may not have perceived in terms of</p> <p>9 Farmer being allegedly under the influence, was the</p> <p>10 words he used.</p> <p>11 Does using the LVNR on somebody who is</p> <p>12 under the influence of drugs present a heightened</p> <p>13 risk of death or serious injury?</p> <p>14 A. Not that I'm aware of.</p> <p>15 Q. Now, even though Metro does not classify</p> <p>16 the LVNR as a deadly force option, if used</p> <p>17 incorrectly, the incorrect use of an LVNR can kill</p> <p>18 somebody, correct?</p> <p>19 MR. ANDERSON: Objection. Form.</p> <p>20 THE WITNESS: Yeah, I'm not sure if Taser</p> <p>21 has been responsible for those deaths, but people who</p> <p>22 have been tased have died.</p> <p>23 BY MR. LAGOMARSINO:</p> <p>24 Q. And let me rephrase the question.</p> <p>25 Let's talk about the LVNR.</p>	<p>1 you release them even though they're not handcuffed?</p> <p>2 A. So the only factor you're leaving out is</p> <p>3 the other officers that were there at that point.</p> <p>4 Someone should say whether that person is</p> <p>5 unconscious. And if they are unconscious, it should</p> <p>6 be very easy to handcuff them.</p> <p>7 So yes, if people are unconscious, you can</p> <p>8 release that hold and handcuff them.</p> <p>9 However, multiple -- we do train that the</p> <p>10 second or third officer does the handcuffing while</p> <p>11 the first officer is in the LVNR.</p> <p>12 Q. Right. And you were presented with various</p> <p>13 clips today. But you have not done, recently at</p> <p>14 least or in your memory, an analysis of what the</p> <p>15 officers there said to Lopera in terms of him being</p> <p>16 out -- when I say him, Tashii Farmer, being out or</p> <p>17 unconscious. You haven't done that analysis today,</p> <p>18 correct?</p> <p>19 A. No.</p> <p>20 Q. So if they're saying about a minute in he's</p> <p>21 out, let him go, that would appear to you to mean</p> <p>22 that he's out and he should be let go, correct?</p> <p>23 A. Yes.</p> <p>24 Q. Today you were asked questions about</p> <p>25 methamphetamine being in Tashii Farmer's system, and</p>
Page 175	Page 177
<p>1 A. Okay.</p> <p>2 Q. An LVNR can kill somebody if it's applied</p> <p>3 incorrectly, correct?</p> <p>4 MR. ANDERSON: Objection. Form.</p> <p>5 THE WITNESS: That's correct. But then</p> <p>6 it's not an LVNR.</p> <p>7 BY MR. LAGOMARSINO:</p> <p>8 Q. Well, I mean, even if you correctly</p> <p>9 applied -- strike that.</p> <p>10 Even if you apply an LVNR in the proper</p> <p>11 position with the hands locked, if that LVNR is held</p> <p>12 too long, that could kill somebody, correct?</p> <p>13 A. I'm not aware of that. But when someone's</p> <p>14 rendered unconscious, they should be released from</p> <p>15 that hold.</p> <p>16 Q. And to that point, you're getting a lot of</p> <p>17 questions today from all the lawyers admittedly in a</p> <p>18 vacuum, right?</p> <p>19 A. Yes.</p> <p>20 Q. You've got to look at the entire case. So</p> <p>21 the question was asked, do you release the LVNR</p> <p>22 before you handcuff, right? But there wasn't a fact</p> <p>23 thrown in there so let me ask you this question: If</p> <p>24 you've got somebody in a restraint or an LVNR for</p> <p>25 over a minute and they appear to be unconscious, do</p>	<p>1 the only phrase that I heard being used was under the</p> <p>2 influence. But let's just talk about under the</p> <p>3 influence.</p> <p>4 Are you equating under the influence with</p> <p>5 in his system, or are you saying that he was drunk on</p> <p>6 meth basically?</p> <p>7 A. It's hard for me to answer your question</p> <p>8 without putting this whole case in perspective</p> <p>9 because Lopera said he thought he was under the</p> <p>10 influence. Now we know it was under meth because</p> <p>11 we've got the toxicology back.</p> <p>12 So it's up to that officer to articulate</p> <p>13 why he thought he was under the influence.</p> <p>14 Q. Okay.</p> <p>15 A. So we are somewhat now knowing that it was</p> <p>16 meth. So it's like cheating.</p> <p>17 Q. But are you saying he was under the</p> <p>18 influence or it was in his system?</p> <p>19 MR. MCNUTT: Objection. Form.</p> <p>20 THE WITNESS: Yeah, I don't know what the</p> <p>21 difference is. If it's in his system, he's under the</p> <p>22 influence. The amount would cause a greater evidence</p> <p>23 that you could tell, but there are drugs that stay in</p> <p>24 your system for a long time.</p> <p>25</p>

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46 (Pages 178 to 181)

<p style="text-align: right;">Page 178</p> <p>1 BY MR. LAGOMARSINO:</p> <p>2 Q. Just so we get our bearings, if somebody</p> <p>3 has a beer and alcohol is in their system, do you</p> <p>4 consider them to be under the influence?</p> <p>5 A. They're yes, under the influence, but</p> <p>6 there's nothing that you could say -- in other words,</p> <p>7 you're under the influence but you haven't reached</p> <p>8 the illegal point for your driving.</p> <p>9 Q. Now, there was some testimony about Officer</p> <p>10 Lopera talking to CIRT and giving a statement and</p> <p>11 then not speaking at the use of force board.</p> <p>12 Did Officer Lopera, to your understanding,</p> <p>13 invoke his Fifth Amendment right against</p> <p>14 self-incrimination by not testifying at the use of</p> <p>15 force board?</p> <p>16 A. I don't know his reason for not testifying.</p> <p>17 And I wasn't involved in those discussions. But I</p> <p>18 assume that's it because the criminal case was still</p> <p>19 ongoing.</p> <p>20 Q. Okay. Officer Lopera and his lawyers have</p> <p>21 hired an expert that characterized Officer Lopera's</p> <p>22 conduct as compassionate.</p> <p>23 Do you characterize Officer Lopera's</p> <p>24 conduct as compassionate?</p> <p>25 MR. MCNUTT: Objection. Form.</p>	<p style="text-align: right;">Page 180</p> <p>1 Q. Based probably -- well, based on the</p> <p>2 evidence that we have in front of us, you've never</p> <p>3 heard any testimony or seen any evidence that Officer</p> <p>4 Lopera said stop to Tashii Farmer before they got to</p> <p>5 the driving area; is that correct?</p> <p>6 A. That's correct.</p> <p>7 Q. And the mere fact that a suspect may not be</p> <p>8 complying with a command does not necessarily equate</p> <p>9 to a use of force greater than what's allowed under</p> <p>10 the use of force continuum; is that correct?</p> <p>11 A. That's correct.</p> <p>12 Q. Does a suspect who is being tased who is</p> <p>13 saying, "okay, I will," and "okay, sir," indicate</p> <p>14 compliance to you?</p> <p>15 A. Well, verbally he's saying that he's going</p> <p>16 to comply. And I believe that's what CIRT meant when</p> <p>17 they said they didn't give him enough opportunity to</p> <p>18 comply.</p> <p>19 Q. Because I think your testimony was Lopera's</p> <p>20 commands taken as a whole and not in two-second clips</p> <p>21 were very confusing, correct?</p> <p>22 MR. MCNUTT: Objection. Form.</p> <p>23 THE WITNESS: So there were some confusing</p> <p>24 commands and there was some quick cycles of the ECD</p> <p>25 that not only I thought, but the rest of the board</p>
<p style="text-align: right;">Page 179</p> <p>1 THE WITNESS: No.</p> <p>2 BY MR. LAGOMARSINO:</p> <p>3 Q. Now, you've heard a number of questions</p> <p>4 about was there a right to detain him and did he</p> <p>5 comply and could he have chased him. I'm not going</p> <p>6 to ask about that. I'm going to ask some very simple</p> <p>7 questions.</p> <p>8 Does the right to detain a suspect equate</p> <p>9 to the right to inflict excessive force on that</p> <p>10 suspect?</p> <p>11 MR. MCNUTT: Objection. Form.</p> <p>12 THE WITNESS: There's no right to inflict</p> <p>13 excessive force for any reason.</p> <p>14 BY MR. LAGOMARSINO:</p> <p>15 Q. There were some questions before you</p> <p>16 watched the video earlier in Mr. McNutt's questioning</p> <p>17 where it was asked of you on the body cam video did</p> <p>18 Lopera say "stop." I just want to make sure we're</p> <p>19 clear for the record. And you said yes. I just want</p> <p>20 to make sure you're talking about he used the word</p> <p>21 "stop" out in the driving area, not in the stairwell</p> <p>22 or in the Venetian, that we can tell?</p> <p>23 A. Yes. You're right. I didn't see it</p> <p>24 anywhere until he got through -- out of the Venetian</p> <p>25 building.</p>	<p style="text-align: right;">Page 181</p> <p>1 who reviewed the case thought was excessive.</p> <p>2 BY MR. LAGOMARSINO:</p> <p>3 Q. I wanted to clarify on the issue of the</p> <p>4 strikes. Were you saying that it was unclear that</p> <p>5 the 10 to 12 strikes completely missed Farmer, or</p> <p>6 that you're just not clear on where they hit Farmer?</p> <p>7 A. I'm not clear the definition of a strike.</p> <p>8 Is a strike a punch thrown or a punch connecting? So</p> <p>9 if you're saying there was 10 to 12 punches thrown, I</p> <p>10 agree. If you're saying 10 to 12 strikes, I don't</p> <p>11 see it on the video. I can't tell how many hit and</p> <p>12 how many missed.</p> <p>13 Q. Have you -- strike that.</p> <p>14 Detective Alsup testified that he did a</p> <p>15 frame-by-frame review of the video to assess the</p> <p>16 number of strikes. Did you do a frame-by-frame</p> <p>17 review of the video?</p> <p>18 A. I did not, but CIRT presented it frame by</p> <p>19 frame. But when I watched the video realtime, I</p> <p>20 don't see that many strikes hitting him.</p> <p>21 Q. Okay. Did you, as part of your review,</p> <p>22 assess the autopsy photos that would show bruising on</p> <p>23 different parts of Tashii Farmer's body?</p> <p>24 A. Yes.</p> <p>25 Q. I'll give you a hypothetical, all right?</p>

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<p style="text-align: right;">Page 182</p> <p>1 If you have a suspect who is observed to be</p> <p>2 unconscious after a period of time in the LVNR, and</p> <p>3 the officer is not releasing the LVNR despite being</p> <p>4 told to do so, does it satisfy the duty to intervene</p> <p>5 by simply saying "stop" and not doing anything else?</p> <p>6 MR. MCNUTT: Objection. Form.</p> <p>7 MR. ANDERSON: Objection. Form.</p> <p>8 THE WITNESS: So we would prefer that</p> <p>9 officers stopped when they were told to. And if they</p> <p>10 don't stop and the use of force is excessive, we</p> <p>11 expect officers to intervene physically to stop them.</p> <p>12 And not just on the LVNR. If someone was punching</p> <p>13 someone and they didn't stop, you wouldn't just let</p> <p>14 them keep punching them. You would grab them.</p> <p>15 BY MR. LAGOMARSINO:</p> <p>16 Q. Now, there was some testimony about whether</p> <p>17 you could tell if Lopera was rear-naked choking or</p> <p>18 LVNRing. Okay?</p> <p>19 However, on the body-worn camera, Lopera</p> <p>20 used both terms. He said that he choked him out,</p> <p>21 correct?</p> <p>22 A. Yes.</p> <p>23 Q. And he also said that, "I rear-naked his</p> <p>24 ass," correct?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 184</p> <p>1 A. Yes.</p> <p>2 Q. Did you have a chance to review the</p> <p>3 transcript of that deposition after you gave the</p> <p>4 deposition?</p> <p>5 A. Yes. This morning.</p> <p>6 Q. You reviewed it again this morning?</p> <p>7 A. Yes.</p> <p>8 Q. Do you have any changes that you would make</p> <p>9 to that deposition transcript?</p> <p>10 A. Nothing other than what I talked about</p> <p>11 today, which was I don't have a bureau that was</p> <p>12 assigned to me that was assigned then.</p> <p>13 Q. Understood.</p> <p>14 Do you have any data which indicates that</p> <p>15 civilians are confused that officers that wear the</p> <p>16 green uniforms don't recognize those individuals to</p> <p>17 be law enforcement officers?</p> <p>18 A. No.</p> <p>19 Q. When you watched Ken Lopera's body-worn cam</p> <p>20 at any time and after Tashii Farmer fled down the</p> <p>21 employee-area hallway, did you see any other patrons</p> <p>22 in those hallways?</p> <p>23 A. No.</p> <p>24 Q. Was Tashii Farmer in view when Ken Lopera</p> <p>25 was running through the hallways and the stairwells?</p>
<p style="text-align: right;">Page 183</p> <p>1 Q. And that's part of all the evidence that</p> <p>2 you have to consider, correct?</p> <p>3 A. Yes.</p> <p>4 Q. And if a suspect is passed out or</p> <p>5 unconscious, does that indicate that there was</p> <p>6 pressure being applied to his neck?</p> <p>7 MR. ANDERSON: Objection. Form.</p> <p>8 BY MR. LAGOMARSINO:</p> <p>9 Q. To you?</p> <p>10 A. While someone's applying the LVNR?</p> <p>11 Q. Or the restraint, either one, yeah.</p> <p>12 A. Yes.</p> <p>13 MR. LAGOMARSINO: No further questions.</p> <p>14 MR. MCNUTT: I just have a couple of</p> <p>15 questions.</p> <p>16</p> <p>17 FURTHER EXAMINATION</p> <p>18 BY MR. MCNUTT:</p> <p>19 Q. You gave another deposition about these</p> <p>20 same events in the case we referred to as the</p> <p>21 Estate of Tashii Farmer versus Las Vegas Metro,</p> <p>22 correct?</p> <p>23 A. Yes.</p> <p>24 Q. And that deposition was December 27th,</p> <p>25 2017, correct?</p>	<p style="text-align: right;">Page 185</p> <p>1 A. No. He lost view of him.</p> <p>2 Q. Right. So there was a question about did</p> <p>3 Ken Lopera give a command for Tashii Farmer to stop.</p> <p>4 Do you typically yell for someone to stop when you</p> <p>5 can't see them?</p> <p>6 A. Not typically.</p> <p>7 Q. With respect to a suspect's hands versus</p> <p>8 what they're saying, which matters more to you, what</p> <p>9 they're doing with their hands or what they're saying</p> <p>10 with their mouth in terms of compliance?</p> <p>11 A. What they're doing.</p> <p>12 Q. With their hands, correct?</p> <p>13 A. Yes.</p> <p>14 Q. What's the definition of "excessive force"?</p> <p>15 MR. ANDERSON: Objection. Form.</p> <p>16 BY MR. MCNUTT:</p> <p>17 Q. Roughly. Paraphrasing.</p> <p>18 A. Excessive force is the force applied that</p> <p>19 is outside of policy in excess of what is required</p> <p>20 to gain compliance. That's off the top of my head.</p> <p>21 Q. Sounds good. At what point in these</p> <p>22 events did Las Vegas Metro gain compliance of</p> <p>23 Tashii Farmer?</p> <p>24 A. At what point did we gain compliance?</p> <p>25 Q. From Tashii Farmer.</p>

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<p style="text-align: right;">Page 186</p> <p>1 A. At some point when he was on the ground 2 being LVNR'd. 3 Q. Okay. I don't know that we marked it, but 4 it was the arrest report. Is that Exhibit B? Could 5 you please -- and turn to page 5 of 8. 6 A. Yes. 7 Q. Do you see where, what you recognize the 8 numbers along the side to be the timestamp from the 9 body-worn cam. That's what Detective Alsup testified 10 to, correct? Or do you know that? 11 A. I'm sorry, can you -- 12 Q. Detective Alsup said -- 13 A. I was reading your -- 14 Q. That's okay. Detective Alsup put the 15 timestamps from the body-worn cam down the left side 16 in the column. 17 A. I see it. 18 Q. So if you go down to three minutes and one 19 second, Sergeant Crumrine arrived and said, "Put your 20 hands behind your back." 21 Do you see that? 22 A. Yes. 23 Q. 3:13 Officer Lopera says, "Is he out yet?" 24 3:15 Farmer gasps. 3:18 Lopera asked, "Is he out 25 yet?" 3:19 Officer Lopera asked, "Is he out yet?"</p>	<p style="text-align: right;">Page 188</p> <p>1 FURTHER EXAMINATION 2 BY MR. ANDERSON: 3 Q. Chief McGrath, do you agree that once 4 handcuffing was completed, all force stopped by all 5 the officers? 6 A. Yes. 7 Q. So if an officer during the handcuffing 8 process were to issue a command to loosen up or to 9 let him go to Officer Lopera, you would expect -- or 10 you would hope Officer Lopera would follow that 11 command, correct? 12 A. Yes. 13 Q. Would it be reasonable for that officer to 14 assume while they're still intending to handcuff the 15 suspect that Officer Lopera did hear the command and 16 did, quote, loosen up or, quote, let him go by 17 releasing the pressure but not releasing the 18 encircling arm? 19 A. Yes. 20 Q. In fact, it would be policy that he would 21 keep the encircling arm around the neck, correct? 22 A. Yes. 23 Q. So it's justifiable for an officer who 24 gives such a command to loosen up or let go to 25 assume that Officer Lopera followed that command,</p>
<p style="text-align: right;">Page 187</p> <p>1 At any point up to 3:19, and take a minute 2 and review the prior pages if you want, has Officer 3 Lopera been told by any other Metro officer to 4 release the hold or do anything different to 5 Tashii Farmer? 6 A. No. 7 Q. Where is the first time Ken Lopera is given 8 a command to do something different? 9 A. Well, at 3:25 Officer Tran says, "Let him 10 go." 11 Q. And we now understand that that actually 12 wasn't Officer Tran, that was Officer Crumrine. 13 That's been their testimony. 14 And then one second later Lopera says, 15 "Are you sure?" And Tran or Crumrine replies, 16 "Yeah." 17 Do you see that? 18 A. Yes. 19 Q. Do you think that one second, assuming 20 that's accurate, is too long of a delay for Ken 21 Lopera to respond to the command to let him go? 22 A. Do I think one second is too long? No. 23 MR. MCNUTT: No further questions. 24 MR. ANDERSON: I just have about three. 25 I'll be quick.</p>	<p style="text-align: right;">Page 189</p> <p>1 despite the fact his encircling arm was still on the 2 neck? 3 A. Yes. 4 MR. ANDERSON: Okay. Thank you. No 5 further questions. 6 7 FURTHER EXAMINATION 8 BY MR. LAGOMARSINO: 9 Q. Just a couple more. 10 The question was asked did Officer Lopera 11 see Farmer in the context of calling out for him to 12 stop. 13 Do you remember that? 14 A. Yes. 15 MR. MCNUTT: In the hallway. 16 MR. LAGOMARSINO: In the hallway. 17 BY MR. LAGOMARSINO: 18 Q. Did you -- did you see Officer Lif present 19 in the hallway -- 20 A. No. 21 Q. -- when he yelled out for Officer Lif? 22 A. No. Officer Lif didn't follow him in the 23 hallway. 24 Q. In terms of what's written here on the page 25 about who said what --</p>

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<p>1 A. Yes.</p> <p>2 Q. -- would you defer to the video, an</p> <p>3 analysis of the video, or would you defer to the</p> <p>4 page?</p> <p>5 A. Well, I would hope that this page reflects</p> <p>6 what's in the video.</p> <p>7 Q. But if the video depicts other statements</p> <p>8 that are made, and they happened not to be here,</p> <p>9 would you defer to the video?</p> <p>10 MR. MCNUTT: Objection. Form.</p> <p>11 THE WITNESS: Yes.</p> <p>12 BY MR. LAGOMARSINO:</p> <p>13 Q. If somebody has been placed in an LVNR or</p> <p>14 neck restraint and they're released, and they're</p> <p>15 unconscious, and they're not reviving, would you</p> <p>16 expect your officers to immediately start providing</p> <p>17 medical attention?</p> <p>18 MR. MCNUTT: Objection. Form.</p> <p>19 MR. ANDERSON: Join.</p> <p>20 THE WITNESS: They should attempt to render</p> <p>21 medical aid. But they are required to call for</p> <p>22 medical.</p> <p>23 MR. LAGOMARSINO: No further questions.</p> <p>24 THE VIDEOGRAPHER: This concludes the video</p> <p>25 deposition of Deputy Chief John McGrath.</p>	<p>1 CERTIFICATE OF DEPONENT</p> <p>2 PAGE LINE CHANGE REASON</p> <p>3 _____</p> <p>4 _____</p> <p>5 _____</p> <p>6 _____</p> <p>7 _____</p> <p>8 _____</p> <p>9 _____</p> <p>10 _____</p> <p>11 _____</p> <p>12 _____</p> <p>13 _____</p> <p>14 _____</p> <p>15 _____</p> <p>16 _____</p> <p>17 _____</p> <p>18 *****</p> <p>19 I, DEPUTY CHIEF JOHN MCGRATH, deponent herein,</p> <p>20 do hereby certify and declare under penalty of</p> <p>21 perjury the within and foregoing transcription to be</p> <p>22 my deposition in said action; that I have read,</p> <p>23 corrected and do hereby affix my signature to said</p> <p>24 deposition.</p> <p>25 _____</p> <p style="text-align: center;">DEPUTY CHIEF JOHN MCGRATH Deponent</p>
<p style="text-align: center;">Page 191</p> <p>1 The original media of today's testimony</p> <p>2 will remain in the custody of Las Vegas Legal</p> <p>3 Video.</p> <p>4 The time is approximately 3:21 p.m. and we</p> <p>5 are going off the record.</p> <p>6 - - -</p> <p>7 (The videotaped deposition was</p> <p>8 concluded at 3:21 p.m.)</p> <p>9 - - -</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: center;">Page 193</p> <p>1 CERTIFICATE OF REPORTER</p> <p>2 I, the undersigned, a Certified Shorthand</p> <p>3 Reporter of the State of Nevada, do hereby certify:</p> <p>4 That the foregoing proceedings were taken</p> <p>5 before me at the time and place herein set forth;</p> <p>6 that any witnesses in the foregoing proceedings,</p> <p>7 prior to testifying, were duly sworn; that a record</p> <p>8 of the proceedings was made by me using machine</p> <p>9 shorthand which was thereafter transcribed under my</p> <p>10 direction; that the foregoing transcript is a true</p> <p>11 record of the testimony given to the best of my</p> <p>12 ability.</p> <p>13 Further, that before completion of the</p> <p>14 proceedings, review of the transcript [X] was</p> <p>15 [ ] was not requested pursuant to NRCP 30(e).</p> <p>16 I further certify I am neither financially</p> <p>17 interested in the action, nor a relative or employee</p> <p>18 of any attorney or party to this action.</p> <p>19 IN WITNESS WHEREOF, I have this date</p> <p>20 subscribed my name.</p> <p>21</p> <p>22 Dated: August 13, 2019</p> <p>23</p> <p>24 _____</p> <p>25 GALE SALERNO, RMR, CCR #542</p>